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The Advocate, November 3, 1969

The Advocate

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Prisons Are for the Other Guy

by James E. Starrs
Professor of Law

You have slept, not long nor too well, when, upon awakening, you find yourself confronted by a placard announcing that:

1. You shall be entitled to the minimal conditions necessary to sustain life and health, but thoughtfulness, affection and other such "amenities" cannot be expected.
2. You must at all times wear a mask of conformity and anonymity.
3. You must expect to be abused and debased, at least mentally, on frequent occasions.
4. You will be subject to the sometimes arbitrary and always final will of one or more administrative bodies, which feel little inclination to explain their decisions.
5. You shall have a right of reasonable access to the courts but the inadequacies of your library facilities will make this right illusory.
6. You must keep your morals in good order, as that state of affairs is decided by others.

Of the following possible choices, which has occurred?

You have:

1. Entered the military,
2. Been committed to a penal institution
3. Been selected for a trip to the moon,
4. Moved to the suburbs,
5. Entered law school.

Answer: 1, 2, 4, 5 and possibly 3.

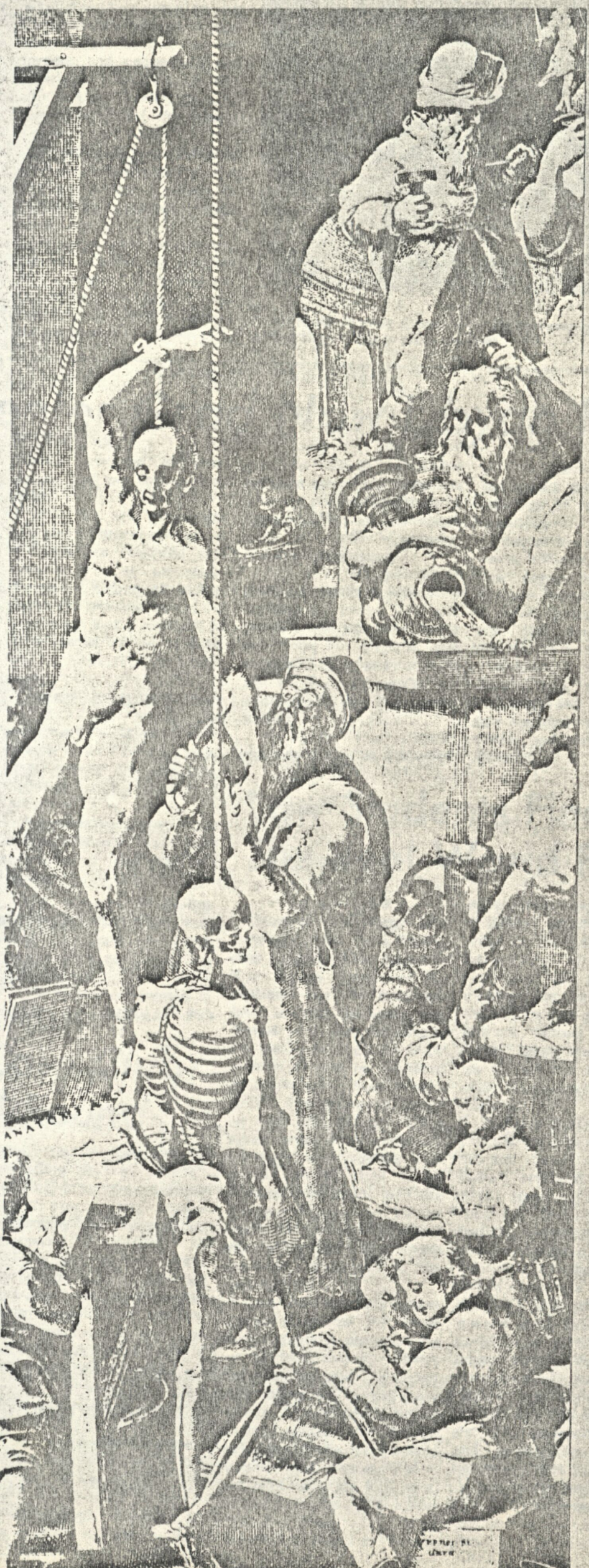
So prisons are like any other place of confinement. Mirabile dictu.

And yet, although a prisoner may suffer many of the same deprivations as others outside the prison walls, the sum of the de-humanizing features of a prisoner's life does not anyone but a prisoner make. A prisoner's lot may not be any happier than anyone else's, but it is also far more forlorn and desperate. It is, I maintain, for that reason that public empathy for the prisoner is only remotely to be expected. And public insensitivity to the exigency of prison reform is, I submit, largely a creature of the public's felt need to be differentiated from prison outcasts. The reassurance is seen as well worth the lie.

In prison, the demand for conformity invites authoritarianism which, in turn, breeds despotic regimentation. "While society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism" wrote Gustave de Beaumont and Alexis de Tocqueville in their report on American penal institutions in 1833. And even today prisoners are not only deprived of their liberty, but are divested of worldly goods, denied access to heterosexual relations, stripped of their individuality and compelled to eat, sleep and be saddened in the company of other deviants.

But this unholy litany of degradations, imposed in an age which gives widespread and loudly vocal approval to the theory of reformation, only begins to toll the prisoner's plight. By law, convicted felons automatically suffer a number of civil disabilities, like the loss of the right to vote or the right to sit on a grand or petty jury. And in many jurisdictions, the intricacies involved in reclaiming these basic rights of a citizen in a democratic society are so cumbersome, costly and time-consuming that the effort is not worth the taking. Yet, strangely, it is not unusual to find that a prisoner's real property is exempt from the running

(See STARRS, p. 8)



Special Prisons Issue

Law Students March on Justice During Moratorium

On the afternoon of the Moratorium over 500 law students from George Washington, Georgetown, Catholic, and American Universities marched to the Justice Department to protest U.S. involvement in Vietnam and the arbitrary prosecution of dissenters.

As human beings, they might have marched elsewhere on that day, but as law students, they felt it particularly necessary to bring their petition to the Department of Justice.

Upon reaching the steps of the building and its towering steel doors, the crowd, which had increased considerably in size, was addressed by GW's Professor Monroe Freedman as police in full riot gear looked on.

After a short spirited rally and chanting of "Peace...Now!" Freedman speaking through a bullhorn told the students that he not only counseled them to resist military induction, but urged and incited them to do so. These statements were met with massive applause from the crowd.

The resolution which was being presented was then discussed and John Kolojeski, Georgetown's S.B.A. president, made a few statements explaining it.

The group had hoped to make a direct presentation to Attorney General Mitchell, but found that it would have to settle for what Kolojeski referred to as a "lackey." This unidentified party quickly accepted the petition and returned to the building without making a comment to the students.

The resolution stated that it was being presented by "concerned members of the legal community." It called the war immoral and unjustifiable and questioned it legally in the light of the U.N. Charter, the U.S. Constitution, and the Geneva Convention of 1954.

It also questioned the legality of peacetime conscription and the government's failure to initiate any meaningful steps toward peace.

It called upon the Attorney General to advise the president of the illegality of the War and to protect the constitutional right of free speech by ceasing the prosecution of dissenters.

by Bill Curle

Professor Monroe Freedman urges students assembled at the Justice Department to resist the draft.

Kameny Opens SBA Speaker Series Nov. 5

by Dave Schlee
Advocate Staff Writer

Dr. Franklin E. Kameny, founder and president of the Mattachine Society of Washington, will open the SBA Speaker Series for 1969-70. Dr. Kameny will speak in Room 10 of Stockton Hall on Wednesday, November 5. The topic of his discussion will be "The Law, the Federal Government, and the Homosexual Citizen."

Dr. Kameny has for many years been involved in the very special legal problems faced by homosexuals in America. He had been especially active in fighting employment discrimination in the federal government, and though not a lawyer, he had successfully defended many homosexual clients before administrative review boards.

His credentials are impressive. He received a B.S. in physics from Queens College, and his Masters and Doctorate in Astronomy at Harvard. He is the author of many articles concerning the federal government's homosexual civil servant, and has been active in many prominent homophile organizations. In addition he had been tentatively scheduled for a TIME Magazine cover story in the near future.

Dr. Kameny's view is that the homosexual must be treated with the same respect as any other member of society. The homosexual is a citizen, who has, or should have, the same basic rights enjoyed by all in the community.

The fact that he does not is an injustice of the highest order. Dr. Kameny is as critical of those who disassociate themselves from their homosexuality as he is of those who criticize it as unnatural.

Dr. Kameny's appearance at GW will afford the law student an excellent opportunity to discuss a problem which has been rather unfortunately swept under the rug in this country.

Blacks Oppose Haynsworth

The newly formed Black Law Students Union was officially chartered at the last meeting of SBA. A resolution opposing the nomination of Judge Clement Haynsworth to the Supreme Court was also passed at this meeting, and submitted to Senator Edward Brooke of Massachusetts. Senator Brooke will read the resolution on the Senate floor during the debate on Judge Haynesworth.

Law Alumni News

Law Center Grad Now Libyan PM

by Jim Coleman
Advocate News Editor

In 1966 Mahmoud S. Maghribi received his S.J.D. from the National Law Center. His dissertation written under the direction of Professor John Cibinic dealt with petroleum legislation in Libya. Today Maghribe can put his researches and conclusions to a practical test. He is now the Prime Minister of Libya.

After leaving George Washington, Maghribi was employed for a year in the legal department of Esso Libya. Then in 1967, during the Six Day War, he was jailed by the old regime for agitating for a stronger stand against Israel.

Upon his release, he worked with a small nationalist group which staged a coup on September 1. Within two hours, the government passed from the hands of the old monarchy to those of the new nine man government.

Shortly thereafter, Maghribi was named Prime Minister, and a cabinet composed of seven civilians and two soldiers took office.

While the new government does plan on stricter controls for oil operations, Maghribi says there will be no spectacular changes in Libyan oil policy. Unlike the previous regime, the cooperation that is extended to oil companies will be balanced with the interests of the Libyan people.

Already acting with these interests in mind, the government has decreed a 100% increase in the minimum wage. Other reforms are also being studied especially in the field of agriculture.

Nationalization, however, is not being considered as Libya has an abundance of land and few farmers.

With reference to ideology and foreign policy, Maghribi has stated that Libya will neither blindly follow nor imitate any foreign system.

The government intends to ascertain the interests of Libya and the Libyan personality before it completely formulates a foreign policy. While Maghribi denounces Marxism, he stresses a social justice which he considers equivalent to socialism.

For now, the government plans to continue the same financial aid to the UAR and Jordan which was given during the monarchy. Maghribi sees union with Egypt as an ultimate goal of the Arab people, but considers it far from being realized.

He sees the Libyan government now as one which aims to foster human dignity and respect for the individual, regardless of race, religion or nationality.

Besides his S.J.D., Maghribi earned a Master of Comparative Law degree from the GWU Graduate School of Public Law in 1964. During this time, he was also employed as an attendant in the law library.

Professor Cibinic recalls Maghribi's exceptional dedication and deep concern over the secretive nature of the Libyan legal system during the monarchy.

Van Vleck Case Club Sets Second Round

On Friday evening, November 14, at 8:00 p.m. the Van Vleck Appellate Case Club will conduct the second Preliminary Round of the Upperclass Moot Court Competition. The competitors will argue the reverse side of the issues that they argued in the First Preliminary Round. The competition will be held in the classrooms of Stockton Hall.

An estimated 200 spectators witnessed the six simultaneous First Round Arguments in which the contestants discussed constitutional protections regarding the use of police agents and electronic eavesdropping in national security cases.

Each team of contestants had prepared their own brief from a trial transcript. Competitors were judged by local attorneys including several assistant district attorneys, numerous court clerks, and several outstanding trial and appellate attorneys.

This year's Van Vleck competition is being supervised by Marty Echter, third-year day student. Results from the First Round arguments are posted on the Van Vleck Notice Board in the entrance hall of Stockton.

Announcements

Do you have announcement for students or alumni of the National Law Center?

Please submit an communications, in writing, to the Advocate mailbox, Student Lounge, Stockton Hall, or by calling Dave Schlee, 659-1428.

Law Students Find The Real World Fun

by Jack Hansen

Students in Professor John Banzhaf's Unfair Trade Practice class have found the subject of their course outside of the casebook and the classroom. Given less than two weeks, each member of the class was assigned the task of finding a real-world example of what he considered to be an unfair trade practice (UTP). The assignment turned up over fifty different UTP's which ranged from inadequate brand and stock selection in a ghetto Safeway store to an alleged violation of the Robinson Patman Act by the consortium of gasoline companies which controls petroleum production in the United States.

One horticulturally-minded student discovered that while FDA regulations prevented the use of food coloring without notice to consumers, producers were permitted to use post harvest "pesticides" which colored edibles and thereby avoid the notice requirement. Another class member filed a complaint with the FTC as a follow-up to his UTP which alleged that advertising "bundles" of steaks at 31 cents per lb. was literally false, omitted to state a material fact and was misleading as well.

Other practices charged unfair by the students were the advertising of records at ficticious list prices which deceived the customer into thinking he was getting a large discount, removal of "made in Korea" labels, and the alleged use of bait and switch sewing machine sale practices by Sears Roebuck.

Professor Banzhaf styles this effort by his class an exercise in "Clinical Law." Citing Ralph Nader's article in the October 11th issue of the "New Republic," Banzhaf points out that this method of teaching is one alternative to, "The techniques of legal instruction which concede to vested interests a parochial role for the law and which permit empirical starvation of portions of their subject matter." He hopes that many of the UTP discoveries will result in legal action consisting of complaints filed with the FTC and other government agencies and perhaps new rules or legislation. Most important, he stresses, is the development of "Student awareness of the problems in our society and their own personal potential ability to act now as agents of improvement and reform."

Senate Testimony

'For Their Own Protection . . .'

Following is a series of excerpts from testimony before the Senate Subcommittee to Investigate Juvenile Deliquency, which held its hearings this past summer. The statements are reprinted here not for any entertainment value; they are published to convey to the reader a more realistic orientation toward the depth of the problems which are discussed elsewhere in this issue--problems not to be ignored by Bench and Bar in a civilized State.

* * *

There is a young man named Richard Vargas who is an epileptic. He told me a story and several of his relatives and several other inmates told me of his being gassed on one of those occasions when he was in an epileptic seizure. The authorities at the Mountainview School think that the way to stop individuals from having epileptic seizures is by throwing tear gas in the room where they are and this possibly will break up a seizure.--Texas State Representative Curtis M. Graves.

* * *

In a prison at Mount Vernon, Georgia, a toilet commode plunger was used to clean prison commodes clogged and jammed with human refuse and then taken immediately to clean sinks in the prison kitchen. No effort was made to clean the plunger, and the sinks were then used to wash vegetables served the prisoners at meal times. He showed that meats, other edibles and eating and cooking utensils are also washed in these sinks. At the time mentioned, there was only one commode plunger in the entire prison for use both on commodes and prison sinks.--John O. Boone, Director: Project on the Administration of Justice, Southern Regional Council.

* * *

One prisoner, Leroy Mason, the plaintiff in the desegregation suit, was locked in a "nut" cell "for his own protection." In that cell, he counted 1,084 cockroaches crawl across his body before he lost count. Another prisoner being held "for his own protection" in the next "nut" cell, Roger Pegram, finally had the guards do something about the cockroaches after he complained often enough. The guards came to the cell while the window was closed and sprayed cockroach poison in the cell, leaving him there to inhale the fumes and subsequently lose consciousness.--Philip J. Hirschkop, Esquire.

* * *

LL-33 stated that he and three other prisoners were planning to escape because of the treatment and not enough food. He stated they were all "slapped" around by three inmate yardmen, because they would not give them money.

He stated that a line rider found out about the escape and brought them to the superintendent who whipped them with the 'hide' on the buttocks with their pants down, and on the back and head. He further hit them with his fists and kicked them. The superintendent then left the building and told the riders to work them over real good.

One rider got four others to help him beat them up. He stated that they came into the building with 'blackjacks', wire pliers, nut crackers, and knives. He stated that they stripped all the clothes off of LL-33 and the rider stuck needles under his fingernails and toenails. They pulled his penis and testicles with wire pliers and kicked him in the groin. Two riders ground out cigarettes on his stomach and legs. One rider stuck him in the ribs with a knife and left a scar. One rider squeezed his knuckles with a pair of nut crackers.

He stated that they worked on him all afternoon, and the next day, he was put out in the field and made to go to work. He stated he was unable to work and they put him in the hospital and would not let anyone see him until he healed up.--Thomas O. Morton, Former Superintendent, Arkansas State Penitentiary.

* * *

But the prison authorities, rather the Gatesville authorities at the Mountainview School, always use homosexuality as an excuse if there are some bruising and beatings and contortions and what have you on an individual's body that they have trouble explaining.--Texas State Representative Curtis M. Graves.

* * *

In an interview a South Carolina convict, a 35-year-old Negro, told how he was accused of "cheating" the solitary cell of maximum punishment by leaning on his artificial leg:

"It was a box you couldn't sit down in or lay down in. You couldn't step forward and you couldn't go backward. If you took a leak or a bowel movement, you had to do it on yourself. You would be in it all night and the day man would come and let you out and let you roam around a little and then put you back in. They put me in because when I was workin' on the road a woman come and asked me how much I would take to bring her a load of the dirt and I said whatever she give me. I never got her the dirt and she never give me nothin', but a guard heard about it and that's why they put in the zipper. When they found out I'd been takin' off my peg-leg and leanin' on it, the warden said they wasn't gettin' enough punishment out of me. They kept me in it for 28 days."--John O. Boone, Director: Project on the Administration of Justice, Southern Regional Council.

* * *

The usual type of punishment in the State of Virginia is to put a man in the hole where he receives bread and water for two days out of every three and two small meals on the third day. Such treatment will last for up to thirty days and very often has lasted more.

We have identified individual prisoners who have lost six inches from their waistline and anywhere from 20 to 40 pounds in the course of one stay on bread and water in the hole in the state penitentiary. In the work camps these variations are more extreme.

Prisoners don't have commodes in many of the work camps and are forced to relieve themselves in a small bucket. After some time the bucket overflows and the prisoner finds himself sleeping in his own waste. Prisoners in these holes very often are forced to sleep on cement floors without mattresses. They are very often forced to remain nude in these holes. It is at this point that the physical brutality becomes relatively unimportant and the psychological brutality great. --Philip J. Hirschkop, Esquire.

* * *

Work for the female inmates consisted of clipping grass with fingernails (for the Negro prisoners) and sewing clothes by the white prisoners. The inmates were forced to sew clothing for relatives of the staff as well as the prisoners.

The Negro prisoners were segregated in even worse facilities than the whites. They ate only the scraps from the table after the whites finished eating. They were also forced to wash personal laundry for the matrons on a scrubboard (although there was a modern prison laundry).--Thomas O. Morton, Former Superintendent, Arkansas State Penitentiary.

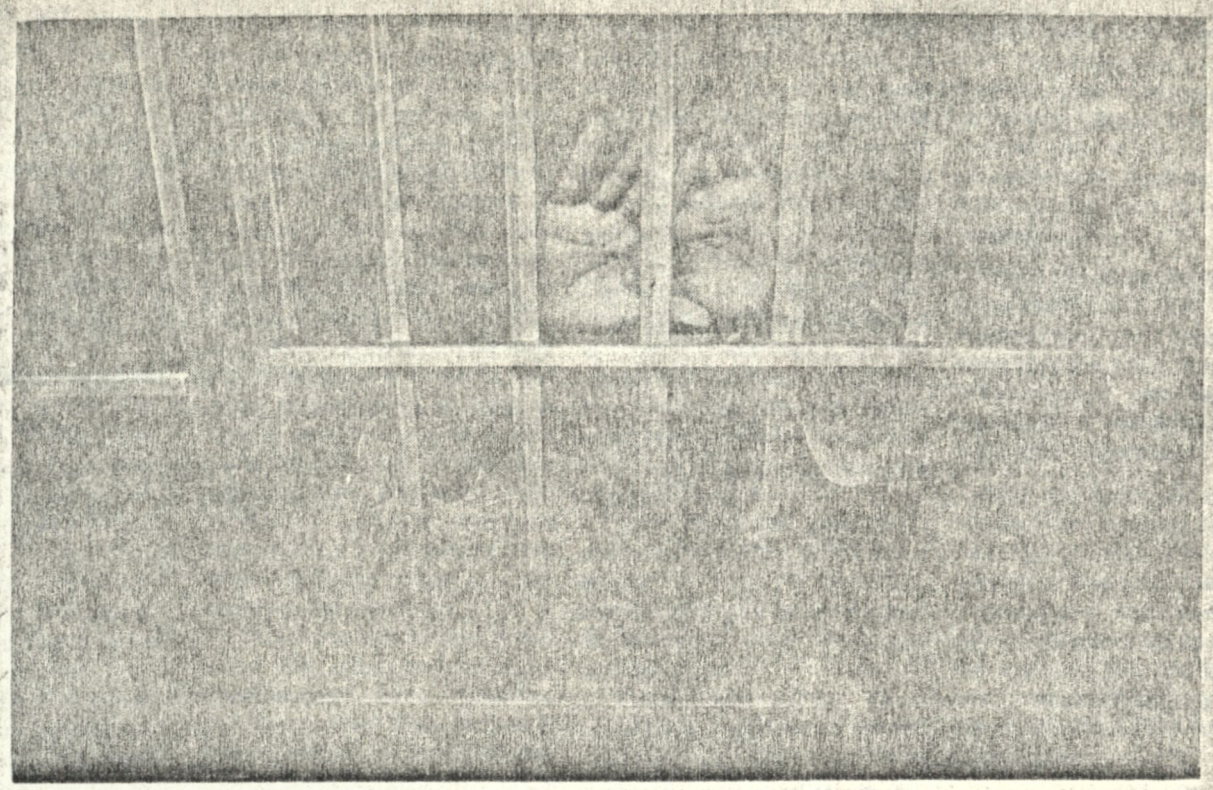
* * *

Last year a prisoner who had been convicted of first degree murder and was sentenced to life imprisonment committed suicide at the state penitentiary in Richmond. This prisoner had presented a defense of insanity at his trial and the superintendent of the penitentiary in Richmond had admitted that he knew the man was psychotic and could not be locked in his cell without being let out periodically.

The superintendent locked this man in a cell and left him there. When the prisoner sent out notes that he was cracking up from the continued lock-up in one cell, they were scoffed at by guards and the superintendent. The prisoner thereafter killed himself. That death was listed as suicide.--Philip J. Hirschkop, Esquire.

* * *

Conditions under which female prisoners were incarcerated in Arkansas were also atrocious. There were impossibly restrictive rules, poor food, unhealthy and unsafe facilities and abuse.



Bernie Boston, the Washington Evening Star

As recently as two weeks prior to my appointment at Cummins, one of the male wardens beat a female inmate with the hide.

One of the former superintendents, had a buzzer installed near his bed to summon his favorite inmate from the Women's Reformatory to perform unnatural sex acts with him.--Thomas O. Morton, Former Superintendent, Arkansas State Penitentiary.

* * *

There is a guard who has been given the name "Chop Chop" by the kids at Gatesville. This is because of the karate chops that he is famous for giving these youngsters whenever they are involved in any kind of altercation with the authorities.

If ever there is an incident where a guard beats a boy or when there is some physical contact where there is something visible that could be seen, there is an incident report written on this accident. The incident report is always supposed to be written and signed by the boy. "Chop Chop's" or Mr. Wimberly's Specialty is karate chopping a youngster in the neck until he fills out the incident report which is dictated to him by the guards.--Texas State Representative Curtis M. Graves.

* * *

In the Virginia penal system inmates had been tear gassed at random prior to August 13, 1968. Guards, who had complete discretion as to the use of tear gas, would spray prisoners in their face with tear gas guns or canisters, because a priosner made a noise, or made a request a guard did not like, or even because the guard was in a bad mood.

We have identified dozens of instances of such tear gassings against particular prisoners. In the majority of instances, the prisoners were tear gassed while locked in their cells or manacled or otherwise unable to prevent the damage normally caused by tear gas.

In all but a few instances, the prisoner involved was not engaged in nor threatening any violent conduct, could otherwise have been subdued if he was so threatening and the tear gas was used by guard only as retribution for an act of the prisoner and not to control the prisoner. In many of these cases the prisoners underwent temporary blindness, various degrees of burns, nausea and much physical pain as a result of the tear gassings.

Almost every time the tear gas was used in close quarters, the guards would close the windows so that they other prisoners might feel the effect, thereby adding to the guard's sadistic delights.--Philip J. Hirschkop, Esquire.

* * *

The plaintiff showed that the entire prison kitchen was rundown and unsanitary, that holes exist in the ceilings directly above open stoves and in rainy weather water seeps through soot-blackened rags stuffed in the holes and then falls into food containers on the open stoves. The prisoners assigned to work in the kitchen use the same mop to mop the kitchen floor as they use to clean the tops of tables on which food is served.--John O. Boone, Director: Project on the Administration of Justice, Southern Regional Council.

Editorial

Mobilization for Justice

To stand in front of the Justice Department with several hundred law students on Moratorium Day to petition the domain of Mitchell & Co. for a redress of grievances seemed appropriate--urgent, in fact-- on that day of giving vent to public sentiment. This was, after all, the branch of government which was trying eight young individuals in a hostile court in Daleyville for the crime of political dissent.

But the forest of placards demanded that Mitchell & Co. "Bring the Troops Home Now"; an erratic bullhorn condemned an "Illegal War"; and the crowd of law students screamed "Peace... Now!" And what were Mitchell & Co. to do?

Granted, October 15th was a day of popular petition against the Vietnam War. Granted, that is the primary aim of the upcoming November 15th activities, planned before the President's Vietnam policy address. Yet somehow the bullhorn, the placards, and the shouts appeared as out of place and mis-aimed as they were ineffective in demanding that the Justice Department bring an end to war.

Law students as law students have good cause to petition the Justice Department for a redress of grievances. For this is the Department whose Attorney General has declined to take a position on proposed legislation which would do away with the Joe McCarthy era statutory authority for detention camps which have given rise to ghetto rumors of possible use against black militants. This is a Department whose Deputy Attorney General has stated: "If people demonstrated in a manner to interfere with others, they should be rounded up and put in a detention camp."

This is a Justice Department which has responded to street crime with short-cut methods such as preventive detention, wire-tapping, and attacks on Fourth Amendment search-and-seizure protections. Gun control, massive grants to increase the number of better-trained and equipped police, and measures to make prisons schools for rehabilitation have been given short shrift by Mitchell & Co.

It is this Justice Department in which a high official told this writer that "What we need in this country right now is a good dose of martial law" and "Frankly, we don't give a damn about an individual's civil liberties; we're out to do one thing: prosecute criminals."

A Target: Prison Policies

It is time law student bullhorns called for change in a shortsighted Justice Department. It is also time for law students to demand that the Justice Department's Bureau of Prisons attack the nineteenth-century policies which have maintained our penal institutions as "universities of crime."

Prison reform has not often aroused the public, nor apparently has it aroused Congress or the Justice Department or law students. In an era of demonstrations for social justice and making war on crime, it is time for law students to arouse the public, the newspapers, the Mayor of the Congressional Fief of Washington, the House and Senate District Committees, and the Justice Department's Bureau of Prisons to move into the Twentieth Century with prison reform.

While Americans are killing and being killed in Vietnam, other Americans fester behind the walls of our "Iron Curtain" prisons and many spread their disease when they are released from prisons. Whether through letters to the Justice Department, Mayor Washington, and Congressman Natcher, or in a march on D.C. Jail, or the Bureau of Prisons, it is time for law students to declare a Mobilization for Justice.

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EDITOR-IN-CHIEF
Craig Scott Miller

FEATURES EDITOR
Philip Rush

NEWS EDITOR
James Coleman

BUSINESS MANAGER & ASSOCIATE EDITOR
David F. Bantleon

ASSISTANT FEATURES EDITOR
Rodney J. Borwick

CONTRIBUTING EDITOR
David Schlea

PHOTOGRAPHY
Wilson Curle, Philip Tabas

STAFF
Tom Blair, David Meyers, Pat Parsons, Michelle Porte, Kathy Riley, Stuart Schuman

Per Curiam: David F. Bantleon

Pickets Have Wrong Target

The logic of the recent demonstration at the Law Offices of Wilmer, Cutler and Pickering by George Washington and Georgetown law students was recently explained to me by several of the participants. It went something like this: since much of the pollution in major cities - especially Washington - is caused by automobiles, automobiles are inherently offensive to one's health and sense of well-being, at least so long as cars continue to pollute our urban skies. Automobile manufacturers are even more offensive because they are responsible for putting the offensive automobiles on out streets in the first place.

To go one step further, while autos are offensive and auto manufacturers more offensive, the Automobile Manufacturer's Association is the ultimate source of "offensiveness" since the association is composed of Ford (offensive), Chrysler (offensive), American Motors (offensive) and General Motors (ech!).

Any attorney who would associate himself with an organization as offensive as AMA must need his head examined since representing such a damnable client as the automobile manufacturers is clearly morally and ethically wrong.

Possibly many of us owe an apology to those students who picketed the W,C & P offices last October 10; now that I, for one, understand their logic, I see that my thinking on the recent government-initiated conspiracy suit against the AMA was obviously in error.

I, too, think that pollution is offensive and since autos cause much of today's pollution, something should be done about the emissions which flow from auto tail pipes.

Since pollution is a nationwide problem, it seemed logical to me that the government, as counsel for the public interest, should be urged to take action against the automobile manufacturers.

I was encouraged to learn that action was recently taken - the anti-trust suit in which the Justice Department charged the car manufacturers with a sixteen-year conspiracy to suppress competition among themselves with regard to research and development of automobile pollution-control devices.

Much like those students who picketed W,C,&P, I was disappointed, yea angered, to learn that the AMA, through its Washington counsel, had negotiated a compromise with the Justice Department.

Now we reach the point at which my thinking becomes faulty. I was under the impression that since the Justice Department represents the public interest in the conspiracy suit against AMA, the fault for any compromise agreement should lie with Justice for failing to prosecute.

Therefore, if any protesting was to be done, whether it be by picketing, writing one's congressman, or however else an individual wishes to manifest his discontent, the logical target of protest should be the Justice Department and not Wilmer, Cutler and Pickering.

In the first year of law school, most law students are taught that our legal system recognizes a fundamental right that all parties to a lawsuit be represented by legal counsel; and that an attorney should use every not illegal means necessary to advance the interests of his client.

Wilmer, Cutler and Pickering represent the automobile manufacturers in the instant anti-trust action and the Justice Department represents the public.

Are those students who picketed saying that the auto manufacturers should be denied legal counsel?

Are all the legal resources of the Justice Department to be considered so inferior to those of one Washington law firm that the American public can justly say they have been denied adequate counsel in the fight against pollution?

If there's a fly in the soup, isn't it in the bowl belonging to the Justice Department and not W,C&P?

While the students who demonstrated last October 10 may say they were protesting the ethics of representing pollutants, I suspect their picketing appeared to the Washington legal community as a protest against the AMA's fundamental right to legal counsel.

I suspect the demonstration may have even appeared to be aimed at that most nebulous being, that ill-defined and oft abused entity, The Establishment, with Wilmer, Cutler and Pickering cast in the unenviable role of "an influential establishment firm."

The front page of the first issue of The Advocate devoted sizeable space to photo and story coverage of the demonstration at the W,C & P offices. The story billed the picketing by GW and Georgetown law students as "first in the history of picketing." So what?

Letters to the Editor

Night Writers

Congratulations and thank you for initiating a law school paper. A project such as the one on which you have embarked, is long overdue at our school. I do hope, by the way, that you will give the night students equal representation. Without being paranoid, at times we feel neglected. Once again, thank you and good luck.

R. J. Colten

Night students are indeed welcome on our staff.--ed.

Law Review

True to form, Mr. Zweben has authored an article which is barely more than a string of cathartic cliches with little or no underlying substance. If the Law Review and big firms did not exist, he would have to devise his own strawmen.

Mr. Zweben states that the Law Review "resembles institutionalized slavery and can only be viewed as the unquestionable perpetrator of big-firmism and smug elitism." Even assuming that this were true, which it is not, we may reasonably ask why Mr. Zweben has enthusiastically competed for the Law Review since attaining eligibility, and why he has seen fit to eagerly represent himself as a third-year associate of the Review. One may also inquire why he has zealously undertaken to interview such firms as Pillsbury, Madison & Sutro--the largest in San Francisco.

We can understand Mr. Zweben's desire to maintain his "credentials" as a "student activist;" however, he should consider being less of a janus-faced hypocrite in the process.

Jack Hassid

Mr. Zweben replies:

Jack's letter reveals a hypersensitivity toward criticism that I had underestimated in some members of our law review. I had expected an elitist silence; instead, I find myself invited to defend my personal integrity and my professional credibility. My enthusiasm for the invitation is understandably dampened by my impatience to return to the issues - that is the merit of law review.

Last year, I voiced my opinions of law review, an institution that has gone through no substantial change since its inception. I was confronted then by the argument that I was not on it, therefore, could not know a thing about it, and furthermore, my dissent was motivated by envy.

This year I have repeated my accusations and am met by the reasoning that as a member, my motivation is hypocrisy. As for next year when I will practice, I cannot foresee what reason will be attached as my motivation for criticizing.

That it will forthcome is clear. After all, aren't law review members by system-acknowledgement the quickest to spot the crucial issues and the most adept at arguing from any side.

Jack has scrutinized my job-hunting activities, and, finding therein something amiss, he has spouted implications concerning my economic loyalties. I did talk to law firms, but the talks would certainly have been bizarre interviews for most law reviewers.

Jack may be aware of a movement on the part of third year students to conditionally seek employment. As Prof. Jean Cahn pointed out in an Advocate article (10/29/69): "Third year students from law schools all over the country are demanding, as conditions of their employment with urban law firms, that they be given an opportunity for meaningful public service within the firm - and the law firms are seeking to meet their demands."

(See ZWEBEN, p. 12)

A Black Perspective

'Racist' Haynsworth

by Jerome N. Duncan, II

Mr. Duncan is chairman of the Black Law Students Union at the Law School.

"...the handwriting is on the wall." Once again the elected promulgaters of "law and Order," known to many as the "durable duo plus one Greek," are preparing to live up to their campaign slogan, promise and philosophy of "Law and Order." Their virtual demand of Senate approval for the nomination of Judge Clement F. Haynesworth to the Supreme Court is but another of their attempts to "keep the Niggers in check."

Mr. Haynsworth comes before the Senate Judiciary Committee with the kind of credentials that reek of baseball, apple pie, the DAR, and Americana in general. Not only is the "learned" jurist a Southern gentlman, but he is also a third generation South Carolina lawyer. It has been alleged that he has made and holds substantial investments in companies which have had cases pending in his court, which seems to me would imply some sort of conflict of interest, as he did not disqualify himself from any of these cases. He has had close business associations with the former Senate Majority Secretary, Robert G. Baker in the Cemetery Land deals of 1958 and 1959. But most important to his backers, the "distinguished jurist" has been reversed 8 times (citations omitted) by the court to which he now seeks admission. These cases have all dealt with the civil rights of Blacks, the most famous being his affirmation of a lower court decision to close the public schools in Prince Edward County, Virginia, rather than integrate them. (Now doesn't that sound like his majesty the Attorney-General's theme these days?)

With such conservative credentials, and with the approval of that great American leader, Senator Strom Thurmond, it is no wonder that, notwithstanding the thirty or so dissenters, Judge Haynsworth will win approval by the Senate.

It should be quite apparent to Black People that the President and his Attorney-General intend to maintain "law and Order" by every means necessary. The military budget was approved in the House. It is holding hearings on an anti-crime bill that will give the "pigs" the right to break into my home if they so desire. (The implications of this bill to Black People, especially those of the District of Columbia, are all too obvious.) The President has already cut back on welfare? yet, in a system that will be profitting from any increased rate of unemployment, who stands to suffer most when 13.5% of the Black Community are unemployed as opposed to a mere 4% of the White? And now Mr. Nixon has the unmitigated gall to appoint the "Honorable" Clement F. Haynsworth to the Supreme Court.

In maintaining "law and Order" one can foresee the inherent and implied danger to the existence of Blacks in America. We have always been advised by the "liberal" community to take our fight to the courts. And a great many of us young Blacks, for this very reason, are pursuing a legal career. Yet, is this all in vain, when the nomination of Clement F. Haynsworth is a pathetic mockery to these very endeavors?

The nomination of Judge Haynsworth only reaffirms my belief that the revolution will be at hand--sooner than Whitey thinks!

Philip Rush

A Swedish Parable

Ah Sweden! A honeymoon of the mind where by reputation the rational has replaced the beastial in man to form a society of honesty, justice, love and blondes. When I was there I was in jail.

It was in Lysekil where a scurrilous attack was made upon my drinking capacity by local police. Their arbitrary and capricious judgment bade my lawyer-like soul to rest for an evening, courtesy of the municipality.

In the habit of always conducting myself as a proper guest in foreign countries, I accepted the invitation and was escorted to quarters somewhat less comfortable than the local youth hostel. My room contained a wooden slat bench, red leather pillow and converted coffee can.

In the morning I arose with a cotton mouth and a brain-bruising headache--no doubt induced by my respect for the law and mortification at having ostensibly transgressed its precepts. Since there was no other activity around me, I used the time to construct a brief argument against the injustice of my incarceration, comforted by the background of my sophisticated education.

Soon a guard opened the door, his face bland as he spoke unintelligibly, "Don't talk backwards at me; you can't fool me by saying something I can't understand," I said. "Besides, I've had no orange juice, or water for that matter and I'm dying of thirst."

Betraying only a faintly quizzical expression, the guard led me along a corridor to the office of the police captain who smiled amiably as I entered and motioned for me to sit by snapping his fingers and pointing to a chair. The dryness in my mouth made speech difficult by this time.

When I glanced longingly at the water cooler he repeated his earlier gesture and then gave me a cigarette. I managed to croak, "I'm actually thirsty and never smoke in the morning. But thank you very much anyway."

He held a light for the cigarette and I realized he of course did not understand my language. "Water," I said, leaning closer and speaking very slowly and distinctly. "No cigarette. Thank you."

His smile disappeared and the happy nodding ceased though he successfully lit my cigarette. Speaking loudly and slowly, I said, "I need someone who understands what I'm saying." He began lecturing me, finger wagging vigorously in tune with negative nodding. Then more words to the guard who disappeared, shortly to return with a young man who conspicuously wore a full beard and longish hair.

"Ah. So you're the chap who I've heard has caused so much trouble. Yes?"

"No." I said. "On the contrary. I've done nothing wrong and there's absolutely no reason for my being here."

"Oh, now," he chuckled. "I do a lot of this work for people like you and I understand your problem. The way I see it, it's largely a matter of socialization, you know. Adjustment is our key term. As a matter of fact, I'm more on your side. These people here don't really understand what's happening in the society today."

During this time he had been continually smiling and glancing at the captain, who had also begun smiling again, and nodding though he had no idea of what was said.

"My people's problems!" I exploded. "I was standing there, not bothering anyone or destroying anything when I was picked up. I have constitutional rights, you know. After all, a man can have a few drinks...."

"Well!!" he cut in quickly, "there we have it, don't we? I mean you admit all of this." He rapidly spoke to the captain who thumped the table and eased his bulk back with obvious satisfaction. "But don't worry at all now; I'll help you out of this. I'm sure you will get only the minimum penalty."

"Minimum penalty for doing nothing. But that isn't fair. You said you were on my side and now I'm seemingly convicted. You weren't listening to me at all."

He threw his hair back and his voice lost its confiding purr. "That's just your problem. All of you people have the same attitude. You really don't understand our legal system and surely don't get along awfully well in our society."

As I recall, I was muttering something about understanding people and getting along and justice as I was led back to the cell.

Rodney J. Borwick

The Courts Cop Out

The contents of this article are based almost entirely on the article "The Unconstitutionality of Prison Life" by Philip J. Hirschkop and Michael A. Millemann to be found in Virginia Law Review, Vol. 55, June, 1969, Number 5. Mr. Hirschkop is a member of the Virginia Bar and is currently serving as counsel in Mason v Peyton. The first round of this case was won by Mr. Hirschkop several weeks ago leading to a favorable order to desegregate Virginia prisons.

When a man is removed from society by the rap of a judge's gavel he often becomes a non-person. Not only is his personal liberty lost to him but for many men, the United States Constitution ceases to exist. No one needs to be told of the difficulty a prisoner has in mailing letters or attempting to contact counsel or how "good time" is lost because of a bad report of a single guard which the prisoner never has a chance to refute. Most of us have heard of situations where a man is placed in solitary confinement simply because he tried to make contact with someone on the outside to let them know what he was going through. But these situations of the denial of legal rights are the least of a prisoner's worries when compared to the tremendous physical and mental punishment which many prisoners face daily.

In either case, it has been rare indeed when charges of depravation of a prisoner's legal rights or allegations that he had been physically abused reached the courts. And even more rare are those cases which upon reaching the courts result in a judicial decision to take jurisdiction or grant a remedy based on the complaint. The logic of this "hands-off" approach seems to be (1) that the prisons are part of the executive branch of government and should only be regulated in extreme situations and (2) that the courts should not meddle in nor take lightly the "expertise" of prison officials who must deal with prisoners on a day to day basis.

The fallacy of these arguments is of course that the courts in other areas of administrative law have often taken the part of a plaintiff when he has been treated harshly by the executive if he can show either that the executive department has violated its own mandate or that of the Constitution. And often the courts have disregarded "expertise" when it has been shown to be either non-existent or that the powers which go with it have been abused.

To then answer the question of why the courts have chosen not to act when the conduct of prisons is in question is difficult, but it is not difficult to see the results this has brought to those who must live in our penal institutions. The courts refusal to "meddle" in prison affairs has created a situation where no one meddles or indeed can meddle in prison life. What this has meant in the day in a life of a prison inmate is that he has become subject to the wims of his jailors without any kind of recourse.

As recently as 1967, Arkansas prison officials were guilty of such medieval practices as hypodermic needles pushed under the fingernails of inmates and beatings administered with fists, knotted rope, brass knuckles, canes, hoe handles, pick or ax handles, shovel handles, clubs, thace chains, rubber hoses, and straps of leather three to five feet in length.

And it was also the Arkansas penal system that produced the infamous Tucker phone, an electrical charging device used upon inmates as punishment and for the purpose of extracting information. This device was applied to the bodies of the inmates by attaching one-wire lead from the instrument to the genital organ of the inmate and one-wire lead to his big toe. The instrument was then cranked sending electrical charges into the body of the inmate.

Unfortunately prison officials are not only direct perpetrators of such horrors but for years their unconcern has made them indirect parties to homosexual attacks and gang rapes. One might have thought that such medieval abuse would have been abolished long ago if not by the revulsion of the humanist then by the sword of the eighth amendment's proscription against cruel and unusual punishment. Sadly, judicial timidity has kept the eighth within its scabbard. With few exceptions the courts have refused relief even in extreme situations. The logic seems to have run this way: The word "unusual" has been read to preclude only a worsening of the

(See BORWICK, p. 12)

Letters Policy

All persons are encouraged to voice their views through Letters to the Editor on any subject treated by The Advocate or of general interest to the legal community-at-large. Letters must contain the signature and address of the writer and be typed in double space. The Advocate reserves the right to edit letters to conform to space requirements. Letters may be deposited in the Advocate Mailbox, Student Lounge, Basement of Stockton Hall, or mailed to James Coleman, 1644 Avgonne Pl., NW, 20009, no later than noon, November 8th.

Quotables

What ever happened to the idea of student participation in law school policy decisions?

Thabo Meli Society

"The law grinds the poor and rich men rule the law."

Oliver Goldsmith
"The Traveller" line 386

D.C. Jail: Landmark to Neglect

"The District of Columbia Jail. . .is indeed a Washington landmark, having served the City and frequently other jurisdictions well for nearly a century.

Few persons coming to the Nation's Capital or reading about its beautiful and historic buildings, the White House, the Capitol, its stately memorials, its magnificent cathedrals and its interesting museums, stop to ponder its Jail."

From the Introduction to the D.C. Department of Corrections' booklet "District of Columbia Jail."

The above statement and its mood of innocence say much about the plight of the jail in the Nation's Capital. The loving care, the diligent maintenance, the willing appropriation of public monies, and the enthusiastic encouragement toward public visitation of other public buildings have no place when it comes to Washington's jail.

Like other public institutions in the Nation's Capital, the Jail is a landmark, a memorial, a community, a school, a public property; yet somehow it has achieved an "Iron Curtain" status which exempts it from public view, popular reform and public monies.

This historic landmark was begun in 1872 - during the administration of Ulysses S. Grant - and completed in 1875, before the Washington Monument. It serves as a "holding institution" for individuals awaiting trials and sentencing.

Designed to hold 535 prisoners, its present population is over 1000. Inmates are incarcerated in cramped single or double cells, the latter originally designed to hold one person.

Prisoners are allowed recreation hour once every two days and a shower once a week. Tougher prisoners spend 22 to 23 hours a day in their overcrowded cells.

A recent D.C. Crime Commission report cited "overcrowding, sexual perversion, idleness, and gambling" as chronic problems in this institution lacking in sufficient vocational and educational training for its inmates.

The temporary nature of the inmates' stay in a holding institution has been cited as a difficulty in maintaining on going programs, though due to the case backlog in District courts many inmates spend up to a year or two in jail awaiting trial and sentencing.

The court backlog condemns large numbers of inmates to months of idleness limited largely to what inmates describe as talk of shooting dope, women, and militant blackism.

As many inmates must have mental examinations before they come to trial, a tremendous backlog at understaffed St. Elizabeth's and D.C. General hospitals has contributed to the large prison population and to trial delays.

The backlog in mental examinations and overcrowding at the two hospitals also means that a wing of the jail is devoted to housing inmates with mental disorders, for which they receive no treatment.

Narcotics is viewed by many prison authorities as the major problem at D.C. Jail. A D.C. Department of Corrections study, completed in August found that of 567 new inmates contacted, "45% gave evidence of drug use immediately prior to arrest. Of this group, 42% gave evidence of heroin use and only 3% gave evidence of marijuana, amphetamine, or barbiturate use."

A prison authority stated that in spite of precautions, narcotics continually enter the prison through work-release prisoners. Dozens of inmates are left in their cells to go through the agonizing experience of withdrawal; only six per cent of narcotics addicts at the jail receive any treatment for their condition.

Characteristically, the response to requests for funds to improve conditions and effectiveness of rehabilitation at D.C. Jail have not been favorable.

At a budget hearing before the House District Appropriations Subcommittee the following conversation between Rep. William Natcher (D-Ky.), former Deputy Mayor Thomas Fletcher and Department of Corrections director Thomas Hardy took place:

Natcher: "I would like to know, and the members of the committee would like to know, as to how you gentlemen feel downtown as to this building (a new jail) and the proposed new District Building."

Fletcher: "We have already prepared the material for you and we will recommend to you which has the highest priority, and Mr. Hardy will not by happy."

Natcher: "Mr. Hardy, Christmas has just passed."

Hardy: "I would like to go on public record about this, but I realize that the District has many schools to build, and additions to hospitals; jails have always come last.

All I am saying to the committee is that something has got to be done over at the jail or else it is going to fall apart."

Conversations with people inside and outside the Jail and inside and outside the government indicate that the blame for conditions at D.C. Jail is placed with many sources. The District Committees of the Senate and the House, Mayor Washington, the Department of Corrections, prison administrators, the courts and the public have all been scored for the failures.

It is plain that D.C. Jail has not been "pondered" with the care and concern which have held the other landmarks and monuments of the Nation's Capital open to public view and pride. It has been difficult for the public, especially college students, to gain a view of the Jail; two students investigating for Senator Tydings' Senate District Committee were turned away by the Superintendent with the admonition that the Jail is not a "tourist attraction." Citizens and tourists are left to "ponder" the Jail with the following introduction by the D.C. Department of Corrections:

"The D.C. Jail under the direction of its nineteenth superintendent continues, as it has for nearly a century, to serve the Nation's Capital as a unique institution."

From the Inside: A Prisoner Speaks . .

The following article was written for the Insider, published by the inmates of D.C. Jail.

by Lawrence Parish

Webster has defined a Militant, Firstly as someone engaged in warfare and Secondly as being aggressively active.

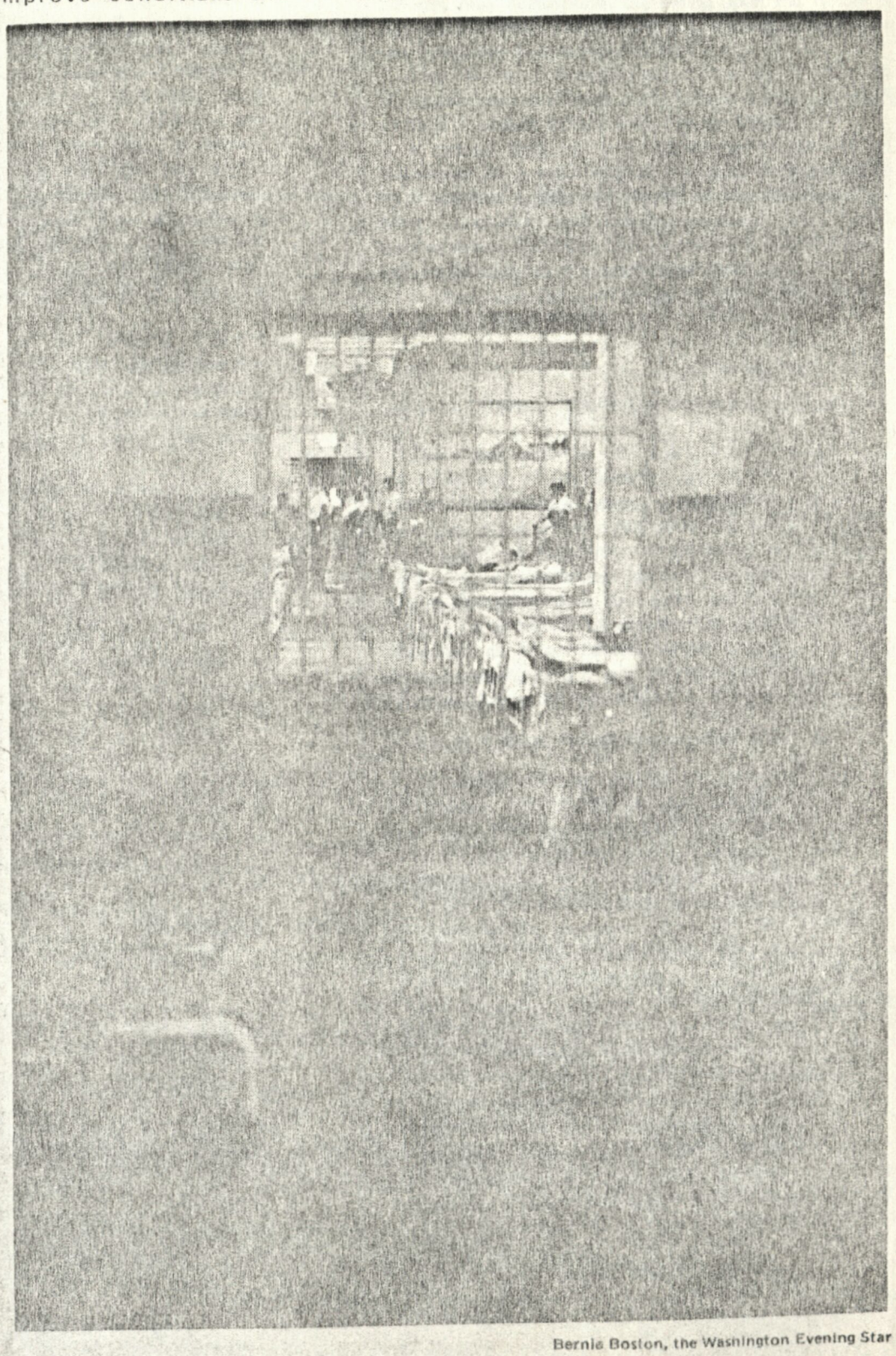
I wonder in all sincerity how many of us could be justafiably called Militant within the context of Mr. Websters definition. It is true that we are engaged in warfare although it's not the physical confrontation of warring parties that I believe the term implies.

I know that my personal involvement in this warfare is only to the extent that I want freedom from my present incarceration. In my battle for freedom I have come to realize that before victory can be acclaimed it has been necessary in the past and probably more so in the future to look wholeheartedly into the legal situations of other inmates as well as my own in order to establish a common denominator from which to properly conduct my warfare with a system that I indict as being unfair, repressive and most certainly unjust.

Secondly, it is also true that we are somewhat active in the struggle for freedom. But, Aggressively active...NO! Defensively Active is more applicably descriptive of our present activation. No, I'm not a Militant, not in the context of Mr. Websters definition.

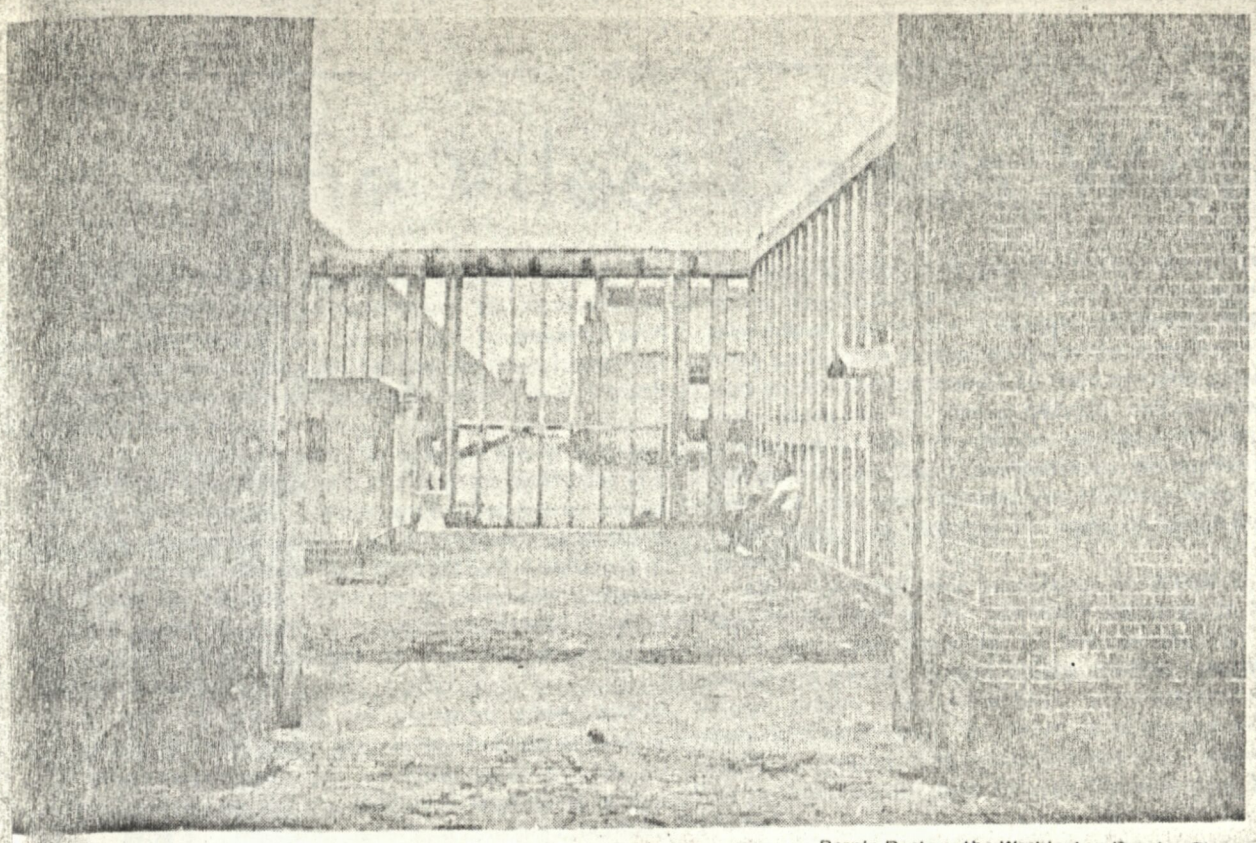
Nor do I feel that the coinage of the phrase Black Militant by the press is in all fairness descriptive of the movement of the many so called negroes who are seeking equality in employment opportunities, economic independence and the educational as well as social control over their communities and subsequently their destinies. These people aren't Militant because they want their just due under a system that claims to offer to all people the very things that these people are in quest of.

I have no intentions of applying this loosely used term to myself, my fellow inmates or the Black movement in it's present status. When in the sometimes dis-orientated and superfluous jargon of my mind I (as a member of the Black movement) decide to use this word descriptively, I'm sure that it will be in the context of it's written definition. If I sound ANGRY in this dissertation it's only because that's what I'am-ANGRY NOT MILITANT.



Bernie Boston, the Washington Evening Star

Looking into the crowded dormitory at D.C. Jail.



Bernie Boston, the Washington Evening Star

Does the locked gate bar the prisoner's plea from the mailbox?

...For Prison Reform

...ench and Bar Fail Prisoners

...is a condensation of the statement of Philip J. ... Esquire, for the ... on the Judiciary, ... to Investigate ... Delinquency.

... 1968, several hundred ... at the Virginia ... in Richmond, ... refused to perform further forced labor without certain minimal improvements in prison conditions. Six months prior to that I had filed a suit in Richmond, Virginia to desegregate the whole state penal system which was virtually totally segregated.

A plaintiff in that suit, Leroy Mason, called me in July of 1968 to represent the prisoners in their demand for improvements in the penal system in Richmond. That call precipitated intensive litigation on my part on behalf of the prisoners in the State of Virginia.

Since that time, I have made dozens of visits to prisoners in the penitentiary, in the State Farm, in road camps, in county jails and elsewhere in Virginia. I have taken statements from hundreds of prisoners and received from five to twenty letters each working day for the last six months from prisoners.

Many of these letters involve complaints with which I cannot deal. Many reveal horrors that defy twentieth century perception.

The worst problem of prison life is the utter hopelessness of a prisoner. A man in the prison system in Virginia has virtually no recourse to seek relief in the courts.

Both the state and federal courts have adopted a hands off policy in the administration of prisons, and unless they are shown the grossest abuses by overwhelming evidence, they will not take any action.

It is virtually impossible to present such evidence due to financial limitations, due to the fact that the bar association is not interested in assisting prisoners in any form, due to the fact that only a small number of independent lawyers will do anything in this regard, due to the fact that there are no laws which curb the actions of the sadistic and very often demented prison supervisory personnel.

No prison official has ever been punished for transferring a man to solitary because he wrote to a court. No prison official has ever been punished because he took away a man's good time because he sought legal redress. No prison official has ever been punished for the hundreds of physical horrors and other depravations to which he has subjected prisoners in the State of Virginia.

As I indicated before, absolutely no one looks over the shoulder of the prison official or

(See HIRSCHKOP, p. 10)

War in a Cell: Angry Men Respond

The following editorial was written by the editors of "The ...der," published by the inmates of D.C. jail.

Two slaves, a white man and a black man, were shut away ... their fellowmen for the misdeeds they had done unto ... men. The slave overseer, himself a white man, was held ...countable for the conduct of the slaves by those who had ...ected that they be put away.

Now, the overseer was a good man, and, having compassion ... his heart for those in his charge, incurred many rebukes ... his superiors because of the privileges he insisted on ...mitting the slaves. But the slaves could not see all that ... overseer had petitioned for them and grew discontent. "Let us do this, and let us do that," they said unto themselves, "and our overseer, seeing our discontent, will grant us even ...re privileges."

But the slaves divined of different purposes, strife arose ...tween them, and they began to perpetrate abuses one upon ... other. The overseer was sore perplexed at their conduct ...d, lest his superiors reproach him for his laxity, he bagan to ... away the liberties he had given them.

"Our overseer is a cruel man," the slaves said unto ...emselves. "Let us rebel, and perhaps he will give back to us ... privileges he has taken." Daily, the slaves grumbled among ...emselves, promising always: "Tomorrow is the day when we ...ll rebel...tomorrow...tomorrow...and still tomorrow."

The overseer heard of these murmurings and became ...wly concerned. He sent forth word to the slave beaters to ...me into his premises and subdue the slaves.

Now when the black slave saw the approach of the slave ...aters he was astonished. "For a truth," he exclaimed, "the ...ite slave has stood up in rebellion! I did not think that he ...uld, but now that he has, I must join him." Forwith, the ...ck slave stood up against his overseer with force.

When the white slave saw that the black had revolted, he ...s also astonished. "It was not in my heart to believe that my ...ck companion designed to put strength to his threats, but ...w, lest he learn that my words sprung from an idle tongue, I ...st support his cause." And the white slave also rose up ...inst the overseer.

The slave beaters subdued the revolters and the overseer ...s grieved. "These slaves have confirmed the suspicions of ... superiors," he lamented. "I gave them liberties and they ...used them...that which they abused, I took from them and ...y accused me of cruelty. Wherefore can I be at fault?"

And from far down the dim corridor of the ages, the voice ... the sage may have echoed: "The heart that quails beneath ... flick of a lash will leap to attack an array of force."

Brick Walls Serve To Stop the Message

The following is the result of an attempt by the Advocate to gain an article from Mr. David Harris, the former student body president of Stanford University, who was recently convicted for refusing to submit to military service.

Mr. Craig Scott Miller
Editor, The Advocate
1725--21st., NW
Washington, D.C. 20009 RE: Harris, David

Dear Mr. Miller:

Please be advised that we cannot grant permission for an article to be written by Mr. Harris for your newspaper. That would be contrary to U.S. Bureau of Prisons regulations. Usually whenever an inmate writes an article for publication it is done for the institutional newspaper and such articles are considered as part of the educational activity.

If you desire further information please feel free to contact us again. Thank you.

Sincerely yours,

Omar G. Rios
Acting Camp Administrator

Dear Mr. Miller:

In response to your request to Mr. Toney for information about inmate correspondence I am enclosing copies of our current regulations. I think they will answer most of your questions and will perhaps provide some additional background information.

The Regulations are subject to interpretation by the Chief Executive Officer of each institution, especially in regard to the procedure for mail inspection and persons with whom inmates may correspond, depending upon the nature of the inmates confined there. Generally the regulations are more liberal at lesser security institutions.

The Bureau establishes rules governing inmate correspondence,and most other inmate activity, by authority of Title 18 United States, Code, Section 4042.

I cannot think of an occasion when the Bureau has interceded in a specific case regarding correspondence. We have however authorized receipt of Holiday Greeting Cards from unauthorized correspondents, see operations memorandum 7300-45. This regulation is reissued every year thus accounting for the cancellation date.

I hope you will write again when you wish more information about the Bureau.

Richard J. Heaney
Acting Assistant Director

Bureau of Prisons, Operations Memorandum 7300.45

Every year inmates, particularly those who are committed for violations of the Selective Service Act, receive holiday greeting cards from a number of unauthorized correspondents. Generally, these cards do not contain personal messages. These cards should be accepted, and processed to the addressee as rapidly as circumstances permit. Letters from authorized correspondents should be given priority, of course, but greeting cards should be delivered as rapidly as such routine inspection as is considered necessary is accomplished. No holiday greeting card should be returned unless there is a clear violation of security regulations.

Bureau of Prisons, Policy Memorandum 7300.14

An inmate may be permitted to prepare manuscripts for publication in the institutional inmate magazine or in connection with their educational program.

In the event an inmate wishes to prepare a manuscript to be taken home when he is released, sent home or to an approved correspondent, or submitted to a prisoner or editor, the following procedures and regulations shall apply: 1. The inmate shall submit a request outlining the content of the manuscript to the Supervisor of Education or some other officer designated by the Warden, who will approve or disapprove the request after consultation with the Associate Warden or Warden. In the event the manuscript contemplated is one that would exceed 6,000 words, the request and outline of content shall be submitted to the Bureau for approval or disapproval. If the Bureau approves the preparation of such a manuscript it may, as a condition of its release, require that the completed manuscript be submitted for approval or disapproval. 2. At the time an inmate is given permission to work on his proposed manuscript, he shall sign a statement to the effect that he agrees to accept the condition that the Director of the Bureau of Prisons shall retain the authority to determine whether the manuscript shall be released to the writer at the time of or subsequent to release from the institution; or whether the manuscript shall be confiscated.

Starrs — from p. 1

'The Vilest Deeds Will Bloom . . .'

of the adverse possession statutes during his confinement. Only the naive would ask: How is it that the law protects the felon's right to property even while it effectively deprives him of the substance of citizenship? Such anachronisms abound in this much overlooked area of the law.

But the law of corrections is not wholly stagnant. Change has occurred here at about the same pace as it has in the schools. Prisoners are not yet able to express their dissent by wearing black armbands as students can, but they do now have the right to the assistance of "jailhouse lawyers", the right to reasonable access to the courts, the right to a certain measure of religious freedom and the right to be free from cruel punishments.

But the time has not yet come when married prisoners can receive mail from their paramours or others who are not on the approved list of correspondents. So if a William F. Buckley Jr. wishes to write an unsolicited letter to a convicted murderer by the name of Edgar Smith, who has been confined in the stark loneliness of the New Jersey death house for some eleven years, he must first obtain court approval to do so, And if the girl friend of a married prisoner sends him a letter, it will be reviewed and returned, but not censored. Prison authorities do not censor mail, by which they mean snipping and blotting our portions of the correspondence. To them, to review and return is not to censor and it is therefore permissible. There is some witchcraft in this verbal legerdemain, by which what is fair is foul and what is foul is fair.

Visitation privileges are also sharply and often insensitively curtailed. Young children may not visit their inmate parents, nor may husbands kiss their wives during visits which are at best infrequent in view of the assignment of visiting hours to times when most people find themselves on the job. In some places, the fear that narcotics or weapons will be passed to prisoners at visiting times has taken such a turn toward paranoia that no touching between the parties is allowed. And (will inhumanity never cease?) there are still those places where prisoners are separated from their visitors be a solid wall and must communicate with them by telephone. Is it too much to ask whether the cost in prisoner irritation, anger and despondency which must inevitably result from such generalized prison policies is worth the risk of a more relaxed, selective and humane practice?

But prison life is not only a life of uniformly styled hair cuts, restricted visiting and mail privileges and the drabness of prison attire. Recent revelations concerning conditions in the state prisons in Arkansas and Virginia convey the shiver and the shock of an Edgar Allan Poe tale of horror, which should have awakened a whole-scale and outraged public uproar. And here too truth is stranger and more permicious than fiction. Our prisons are still, in far too many ways and places, the relics of barbarism that caused Hawthorne to descry them as the black flowers of civilization and which Oscar Wilde damned as Humanity's machine.

But it is unfair to the well-intentioned in the correctional system, particularly the enlightened in the Federal Bureau of Prisons, not to remark that all prisons are not alike. In this respect, prisons are like multiple wives, as any self-respecting bigamist might say. They are all of a piece in tender declarations of purpose but their operations and performance are, as a rule, diverse, unpredictable and often belie their announced objectives and capabilities.

For example, the Mississippi state prison at Parchman is reputed to allow over-night conjugal visitations to its nightmates. In doing so, this prison is light years ahead of most other prisons in this country, although its initiation of the program followed long after it had been proved to be effective on the European continent. I have personally encountered a prison warden who answered my suggestion that a sound program of rehabilitation would seem to require some form of conjugal visitation with a smirk, a smile and a wink. It is almost as difficult to reason with that kind of physiognomical logic as it is to refute the popular cry for vengeance that visitation privileges would dramatically dilute.

Prison reform has progressed in stages which are so slow as to be almost imperceptible. Doubtless John Howard and Elizabeth Fry would not be satisfied nor would penal reformers of a more contemporary or less uncompromising stripe. And, I submit, the public is largely accountable for the delay which has fettered efforts at penal reform.

Prisons on the order of Lewisburg, Alcatraz, and Leavenworth have been tried and over many years have been found totally wanting in rehabilitative capabilities. They are as futile for anything but callous retribution as were the weary labors of Sisyphus. Concededly, Alcatraz is gone but the crowds still flock to the San Francisco wharf to snap its picture or to take a boat near it or just to oggle - pleasantly. Prisons are a parlor and picture sport for the complacent set who do not feel threatened by them and who consider their existence to be a pellucid and persuasive affirmation of the virtue of their own ways. Prisons are fair game for sightseers, photographers, the curious and even the columnist Nicholas Van Hoffman, who finds much support in them for his brand of foot-in-cheek cynicism.

Why "ex-cons" have even begun to appear in the labored rhetoric of the mayoralty campaign in New York City. One contender for the coveted prize has sought to elevate himself by the criminal records of those whom the incumbent administration has indirectly employed. The thrust is as abvious as the politics is tawdry. The public does not want "ex-cons" to restructure their lives through the jobs they must have.

In one case, which came to my attention, an "ex-con" was arrested in the District of Columbia for peddling on the public streets without a license from the police. He indicated that he had attempted to get a license but was told that his criminal record precluded the issuance of a license. This annoyed and perplexed him, all the more because the wood carvings which he had sought to peddle were the result of his putting to use woodworking skills which he had learned in prison - in an effort to make him employable.

Yet, Freud felt that the public need for the expiation of crime and criminals arose from an identification of the public with the criminal. Today's criminal was yesterday's members of the non-criminal public. As he put it: "The human code of punishment...rightly presumes the same forbidden impulses in the criminal and in the members of society who avenge his offence. Psychoanalysis here confirms what the pious were wont to say, that we are all miserable sinners."

And the public's banishment of the criminal to a forgotten and unknown imprisonment in some secluded prison may be intended merely to put both the person and the "forbidden impulse" out of mind. But it is more probable that the public adamantly refuses to find its image reflected in thecrime of a prison inmate. A prisoner is not only an outcast. He is considered to be unlike the rest of society and, as such, he is a menace to our welfare. Consider the clamor and commotion that followed the announcement that the National Training School for Boys would relocate from Washington, D.C. to Morgantown, W. Va. The W. Va. townfolk were outraged. Why it was almost as if a funeral home were to be established in their midst. The reminder of crime was almost as intolerable as the recollection of death. Neither would be for them. They were different - and better.

But there is a substantial degree of public inertia and neglect which accounts for few and feeble starts toward penal reform. The public has not declared its total willingness to experiment in the reformation of criminals. Thus an emasculated work release program which employs only the most corrigible is in operation in New York and the Federal prison system and elsewhere. It must be expanded if it is to succeed but prison administrators justifiably dread the popular reaction upon learning that felons of a more than passing acquaintance with crime are working in the community in the day and returning to their prisons at night.

The public also seems to think that the dehumanizing influences of prison life are either over-editorialized or fully countered by the provision for the basic minima of existence while imprisoned. As Dostoyevsky put it in his "The House of the Dead":

Some people think that if convicts are well fed and well kept and all the requirements of the law are satisfied, that is all that is necessary. This is an error, too. Everyone, whoever he may be and however downtrodden he may be, demands - though perhaps instinctively, perhaps unconsciously, - respect for his dignity as a human being. The convict knows himself that he is a convict, an outcast, and knows his place before his commanding officer; but by no branding, by no fetters will you make him forget that he is a human being. And as he really is a human being he ought to be treated humanely. My God, yes. Humane treatment may humanise even one in whom the image of God has long been obscured. These 'unfortunates' need even more humane treatment than others. It is their salvation and their joy...

It is, at first statement, a strange and startling suggestion that prisoners be given more care and concern than other persons outside the prison walls. They need doubly equal protection which is but to say that further deprivations in the face of such a demonstrated need are judged to be self-defeating. We may all live in "the unspeakable and incommunicable prison of this earth," which haunted the works of Thomas Wolfe, but the stone walls of a prison have for too long made the world safe for an hypocricy that sees no evil and fears no evil in the present prison system. Our contemporary prisons are still Reading Gaols where:

The vilest deeds like poison-weeds
Bloom well in prison-air;
It is only what is good in Man
That wastes and withers there:
Pale Anguish keeps the heavy gate
And the Warder is Despair.

There is no anodyne. I am no optimist. Old prisons never die and public apathy will not fade away. But we must cease deluding ourselves with a mythical and soothing bromide which pictured the public as Little Red Riding Hood and the criminal as the fox. Prisons are not for the other guy. They are for us too - if and when time comes.

Council on Crime and Delinquency

The System and the Juvenile Delinquent

Following is a condensation of the Statement of Milton G. Rector, Executive Director of the National Council on Crime and Deliquency, given before the United States Senate Subcommittee to Investigate Juvenile Deliquency, (July 11, 1969).

The general public must simply be made to understand that it gains neither protection nor security from a punitive and repressive system of dealing with juvenile deliquency. Probation officers who recommend and lawyers who support without challenge detention or commitments of younsters to institutions where they will be preyed upon by others and in other ways made bitter rather than better, are serving neither the public nor their young client.

Judges, who permit detention in substandard detention homes and jails and who commit to ill-equipped and understaffed training schools, clearly violate the juvenile or family court laws of every state which require that the court shall see that the child receives the care, custody, and treatment that he should have received in his own home.

The loneliness and social isolation, the disinterest and emotional neglect, and the still too often administered brutality experienced by our youth in detention homes, jails and institutions somewhere in practically every state of this nation are basic causes of the mounting juvenile delinquency and crime rates.

We know that all dependent, neglected and many non-dangerous delinquent children should be diverted out of the justice system to other systems offering a range of family and child welfare services, and social and mental health services.

Juvenile Court judges should simply cease to accept such youngsters for detention or for probation or commitment. Surely this would create huge case overloads on child welfare, health and mental health agencies.

But that is where the overload belongs, not with the court--and those are the systems which should be strengthened to deal with such youngsters--not the court or correctional systems.

Certainly many neglected youngsters would continue to be neglected--and because of the lack of foster and shelter care facilities many would continue to live with neglecting and improper parents. But, I suggest, that neglect will be far less damaging and far less delinquency producing than will the accumulative experience of cold storage in an overcrowded detention home, rape of mind, if not body, in a jail cell, the neglect and stigma of an overloaded probation system, or commitment to mass regimentation and depersonalization in a substandard training school.

What of the hard core delinquents, those with whom all other welfare, education and health experts have failed? These require the superspecialized care and attention of the court and correctional system, at least as good, but preferably better than would have been available in their own homes.

If such services meeting the minimum standards intended by law are not available, I suggest that the judges refuse to use the services and facilities of the type condemned by those experts who have testified before this Subcommittee.

Again there certainly would be a public uproar--this time an uproar which Congress, State Legislatures and County and City officials would hear. The benefits would be twofold: Necessary legislation and appropriations would be adopted to bring the correctional systems up to minimum standards so they could indeed develop knowledge and methods for re-educating and redirecting warped attitudes and deviant behavior; we would find that a majority of those delinquents released into the community in lieu of commitment would do as well and most likely better for not having had the institutional experience.

This alone would give state planning commissions second thoughts about diverting federal and state delinquency and crime control funds into well staffed community based services before any more institutions are constructed.

I know of no other way to bring about a rapid overhaul of the system in which we now attempt to treat problems of delinquency (and the same could apply to adult jails and correctional institutions) than to comdemn the majority to disuse until they are staffed and equipped to carry out the mission of corrections.

It would require courage and concern not very visible in most judges and correctional officials because they rightly consider themselves public servants. Their sensors tell those to whom I have suggested such action that the public would not accept it.

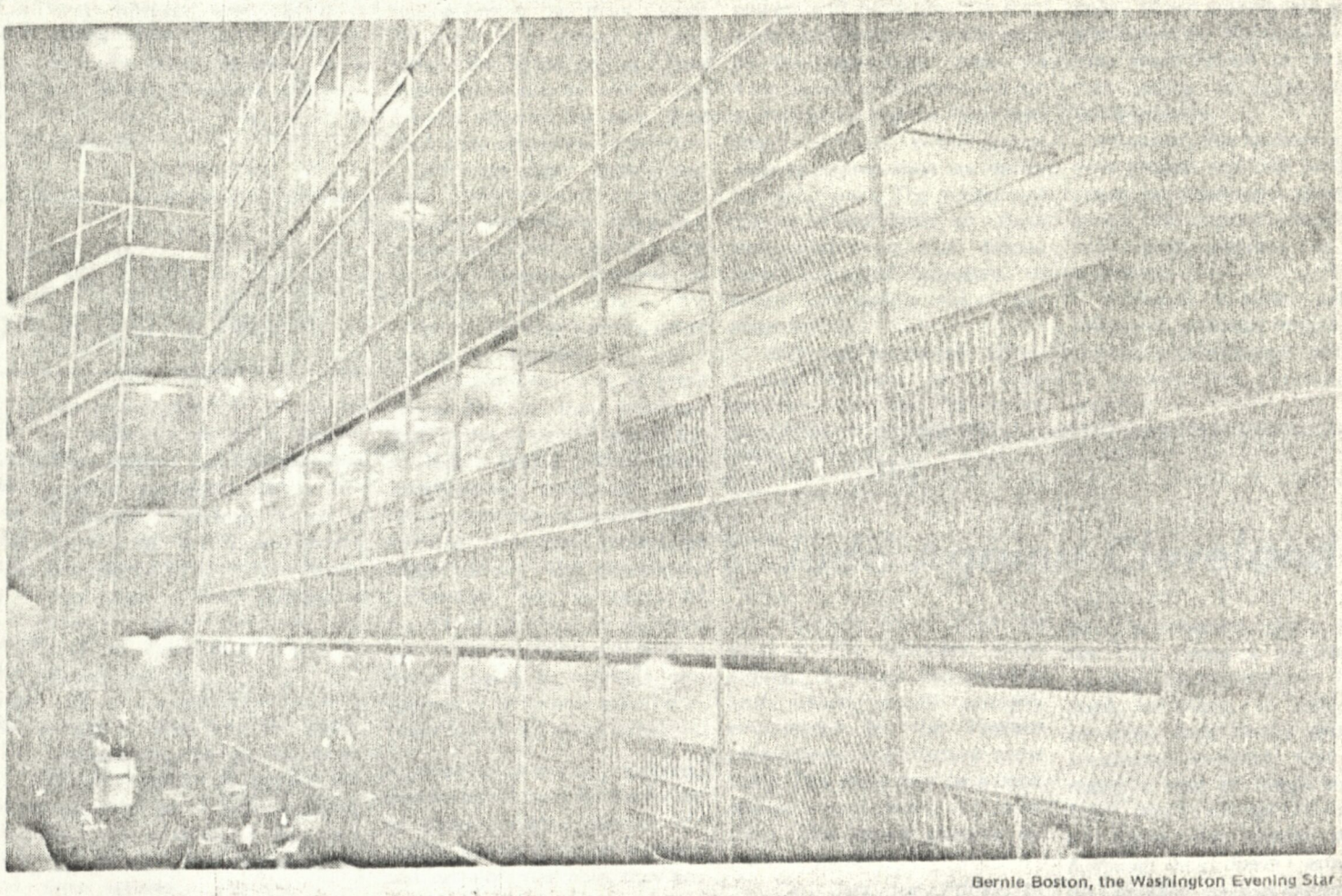
We hear little public outcry and even find sanction of brutal beatings of inmates by other inmates or by staff in institutions, and find little demand for inquiry into regularly occurring deaths of inmates in detention and commitment institutions.

This is undoubtedly because the public assumes that training schools and prisons hold society's most dangerous delinquents--rather than offenders who chiefly are in the lower levels of educational, cultural, and economic attainment. In juvenile institutions, particularly for girls, it is not unusual to find that a majority of those held have been committed for charges which would not be a crime if they were adults.

The public looks to those who run its courts, law enforcement and correctional systems for leadership. It should not have to wait for a scandal or public inquiry to get the facts--often raised out of context--or to be told that the system is not working and in fact may be failing to provide protection and rehabilitation.

By continuing to detain and commit to such institutions which they know are detrimental to both society and the inmates, judges are declining an appropriate leadership role and in fact serve to perpetuate a myth of correction, rehabilitation and increased public safety in situations where such is impossible.

(See RECTOR, p. 12)



Bernie Boston, the Washington Evening Star

A cell block at D.C. Jail.

Prisoner Education Program

Legal Aid Seeks New Approach

by Dave Schlee
Advocate Staff Writer

Since it first began to confront the problems of DC prisons and prisoners several years ago, GW Legal Aid has been unable to discover a successful approach to them. There have been too many difficulties in reaching the inmate in need of legal advice, and until recently, apparently few ways around those difficulties.

This dilemma has been reflected in the minimal prisoner response to the Inmate Correspondence Program, Legal Aid's only venture into the field to date. Inmate Correspondence was set up several years ago, partially through the efforts of Professor James Starrs. His contacts within the DC penal system gave impetus to the program, but unfortunately Legal Aid was not allowed by prison officials to publicize its efforts within the correctional institutions. Thus there has been a reliance upon word of mouth among the prisoners, which has proven woefully inadequate--only six letters have been received since June, and several of those were not new cases.

In recent weeks, however, Legal Aid has indicated a new direction in its efforts in this field. The Inmate Correspondence Program under Sherry Seiber and the Legal Education Program under Ralph Koransky have combined efforts to formulate a proposal which would if finally adopted by Legal Aid, send law students into the prison system to teach such courses as Criminal Procedure and Consumer Education.

The program is the idea of first-year student Bill Sessions, who spent the summer teaching consumer education in a District prison. There he was able to see first-hand how ill-informed most prisoners are about the law, and it is to this problem that the new proposal addresses itself.

So far prisoner response has been quite good. When Sessions and Koransky met with a selected group of inmates last week, enthusiasm for the new program ran high on both sides. It remains to be seen, however, just how many inmates actually turn out for the courses, as they will be held at night and in addition to the regular prison school program.

It is also hoped that this new idea will help to revive the flagging Inmate Correspondence Program by giving Legal Aid an opportunity to make its presence known among the prisoners (though prison officials would undoubtedly be cool to open solicitation by Legal Aid).

But it appears now that Legal Aid may finally be on the right track. Its new prisoner education program could be the means by which it can reach the DC inmates, from whom it has been so long out of touch.

(Any law students interested in either teaching courses or doing research for the program should contact Bill Sessions at 483-7314 as soon as possible.)

Hirschkop Testimony — from p. 7

Sadism Given Rampent Reign

very often a prison guard and their actions are not only unfettered by law but unfettered by any social standards in a modern day civilized society.

Prisoner Robert Landman is one of the best known writ writers in the country. He is a brilliant prisoner who has for years sought to change conditions in the prison through legal proceedings.

He has been held in C-block, the maximum security compound of the penitentiary, because he is a writ writer. He was also put in meditation cells because he discussed the court order with the prisoners.

He has numerous times had his legal files seized, been threatened with tear gas, threatened for seeking legal redress, etc. He is now held, together with five other prisoners, in a small block, separate from even the most hardened criminals in the maximum security compound in the penitentiary.

The authorities will not disclose why he is being held in such unusual condition, cut off from all normal prison contacts, although they admit he has never been violent or engaged in any violence in prison life. He is being held in that manner only because he sought legal redress in the courts.

Another prisoner was tried some years ago for murdering a guard. His trial was held in an outside court under the normal judicial procedures.

The prisoner was acquitted by reason of self-defense. Despite this, the superintendent of the penitentiary has held this prisoner locked in one cell for several years now.

Another prisoner, Allen Pruitt, was tried in the regular courts for murdering a doctor and a guard some years ago. Despite the fact that he was acquitted by reason of insanity, the superintendent of the penitentiary held him locked in one cell for a period of over three years.

In each instance, the superintendent indicated that regardless of what the outside courts did, he would punish these individuals and would try to drive them insane.

I could detail hundreds of prisoners who have lost good time without ever having a charge other than agitating. Basically what happens is a man seeks legal redress and they take away his good time in retaliation.

A superintendent or a supervisor of a work camp or penitentiary can thereby make prisoners serve extra terms of years merely because the prisoner chooses to complain of prison conditions or seek redress for the same.

The ultimate result is that the overwhelming number of prisoners are afraid to do anything to truly disclose to the world what goes on in that forgotten society. Sadism of guards, superintendents and supervisors is given rampant reign.

Similarly, if prisoners complain or otherwise seek legal redress, they are transferred to the maximum security compound or perhaps locked in cells for terms of years. In many of the compounds even if the prisoner has a will to seek redress of his grievances, it would be impossible.

In much of this system a prisoner only receives one piece of paper a week to write a letter. There are only a few minutes during one or two days a week in which he is allowed to post letters. All letters are, as I have indicated, censored and if the censors do not like what they read, they do not mail the letter.

We have court records that show where letters are written to lawyers concerning litigation, photocopies are made and sent to the Attorney General of Virginia, even where the Attorney General is on the other side of the litigation.

The ultimate result of these procedures is that prisoners totally lose hope and respect for a legal system. This utter hopelessness combined with physical tortures, brutalities and totally arbitrary procedures make prison life thoroughly unbearable, not in terms of people being afraid to go there but in terms of the ability of a human being to maintain any degreee of emotional stability in these day to day procedures.

While better guards, psychological tests for the hiring of guards, higher salaries for guards are certainly an element and certainly desirable, they are not the basic problems.

The basic problem is that guards are totally unsupervised. In the prison system in Virginia, where the rack and the whip were both used in this century and as recently as a score of years ago, we cannot treat the supervisors who come from that training as penologists.

We must not allow these people to totally deny prisoners access to the courts. We must not allow them to deny prisoners the ability to write to the courts and lawyers and to see lawyers, as they did in July 1968, until the Federal Court ordered otherwise.

We must not allow them to be able to take good time from prisoners and put prisoners in holes designed to destroy a man's mind merely because he seeks to complain of conditions or seek legal redress for the same.

What is necessary is some kind of judicial review of the prison system which will curb the supervisory abuse.

Where penal authorities are allowed to act with despotic powers and only give the shop worn justification "for the good of the institution" then the truth squads of Germany are not so far away and in fact have been with us with greater despotic power than we realize for many years. The majority of the superintendents of these state prisons are men warped from years of exposure to saidsm and sadistic beyond our imagination.

What must be realized is that a superintendent of a state penitentiary has far more control over the disposition of a prisoner than any judge.

We have substituted untrained and often warped human beings in the criminal process for the judges who are restricted by due process and constitutional guide lines. It is the concept of the hopelessness of the prisoners and the total power of prison supervisory personnel that must be conveyed.

When charges are made, they are merely vague charges of agitating or something similar that does not describe any offense.

A supervisor in a work camp, in a state farm, in a penitentiary, may in effect take a man's good time away and deny him any parole, thereby causing a man to serve two or three times the amount of time which a judge assumed he would serve in rendering him the original sentence.

In recent years, courts are awakening to the fact that they must abrogate the "hands off" policy of not looking into prison administration the same as they have been forced to abrogate that policy in state school administration.

However, this has been a very slow process and will probably render no meaningful change in prison life unless the legislative body gives impetus to this movement.

Without greater judicial safeguards, prisoners remain men without a constitution, without a government, without a country.

Finch and The 1st: HEW's Honorable Men

by Philip Rush

On November 12, 1968, in "Tigar v. Cohen," the ACLU won a Court of Appeals order restraining HEW from preventing Michael Tigar from speaking to the Thursday Discussion Group on the draft. Any speculations that then-Secretary Wilbur J. Cohen might interfere with rights of free speech were unnecessary since HEW was graced with a new head by the Nixon administration--Robert H. Finch, a truly honorable man.

In an answer in the "Tigar" case, HEW stated, "Robert H. Finch, as Secretary of Health, Education, and Welfare and successor to Wilbur J. Cohen, denies that the policies and practices of former Secretary Wilbur J. Cohen, as alleged by the plaintiffs in this complaint, have been adopted, ratified or are being implemented or pursued by him." And these eminently reasonable protestations by HEW were taken note of by the "Tigar" court.

However, just a month ago, ACLU services were again called upon in "Morgan v. Finch" when AFGE Local 41 was ordered to stop distributing welfare rights literature at HEW. Surely there had been some mistake! And so it was argued once again in court. Because Secretary Finch is an honorable man, HEW said it would not attempt such censorship again and its promises of good behavior were believed by the District Court which dismissed the action on those grounds.

Non-believers in the essential honesty of HEW's leadership at that time labelled "deliberate non-compliance" HEW's tactics of resistance to court orders. They charged that it undermines public confidence when this government agency, which is charged with securing compliance with court orders by the states, is itself engaged in evading court directives and making misrepresentations to Federal courts.

But anyone can make a mistake. And another slight, harmless blunder occurred when HEW attempted to prevent Dr. Benjamin Spock from speaking on Moratorium Day by prohibiting three organizations from meeting.

The HEW Thursday Discussion Group, Local 41 American Federation of Government Employees and the Vietnam War Moratorium Committee of NIH/NIMH had requested use of HEW auditoriums for meetings to be addressed by Spock. The Government represented that employee groups were never permitted to use Department facilities for non-governmental business during working hours.

It took an eleventh hour Court of Appeals order on the 14th for Spock to have the right to address these interest groups at the NIH auditorium from 12 to 2--the lunch hours. The test for such relief is usually immediate and irreparable harm.

However, only the habitual skeptic would contend that the real reason was that the Government might have disapproved of Spock or his views on the war. Surely this was only another mistake, for Secretary Finch is an honorable man.

Elliott Defends Controversial Toilet Fee

Dr. Lloyd Elliott, President of the University, today defended the assessment of a controversial $50 lavatory usage fee from all law students as well as from undergraduate and graduate students at GW. "We feel that modern, up to date lavatories are a necessary part of an integrated building program for an integrated urban university community," said Dr. Elliott.

Noting that there are more and more students living on campus every year he declared, "They've just got to have someplace to go. I mean, something like that can create a lot of pressure on a school." He emphasized that in an integrated urban university community, the least little spark can set off large scale student unrest.

The Thing

'Judd Against Cleveland'

(Editor's Note: Each big issue of The Advocate, in an attempt to keep law students and other people properly acclimated to the Western Hemisphere, will feature some thing. This thing may be a book review, movie review, or other thing. This issue's thing is by J.M.D. Coleman.)

Carl Betz, last Friday, as Judd (Judd for the Defense), faced a critical professional challenge in a role unlike any other since he delivered "Snappy", the neighbor's puppy, on "The Donna Reed Show" aired in the Spring of 1961. Perhaps Betz will always be cited for the "Snappy" episode, yet "Judd Against Cleveland" places him in a place with Spencer Tracey as Darrow in "Inherit the Wind" and Jack Palance as Abraham in "The Bible".

The episode concerned an attempt to frame one itinerant worker, Bing, played with considerable interest by guest star, John Pastori, in one of his few television appearances. Judd, interceding in the interests of justice without a second's notice, saves Bing and gets his name on local television. The dexterity Betz displays, however, in the role of quick talking Judd, saves this senseless storyline. Judd, at first, only accepts the case on a three percent contingency. Later, Betz, in a masterful scene, gives the T.V. viewer a glimpse of Judd's transformation from Judd, as friend, to Judd, as advocate. Judd finally gets so personally involved that he makes a vow to Bing's sister, Edith, that he will get Cleveland, or know the reason why. Although Judd doesn't actually get Cleveland, he does manage to get a quo warranto. While this does little for Bing's case, as shown by Pastori's characterization of the timid, bungling worker, it does impress Edith. She leaves the city for an uneventful rendezvous with Judd, who is gathering fingerprints and writs in Portland. When the two return, Bing has emigrated to Canada and Cleveland is in chaos. In the last segment, Betz is, perhaps, his most grim, as he tells Edith that she is ungrateful and "pandering"* and tells the Cleveland City Fathers that they "smack of smug elitism."

If the next episode proves this fascinating, The Advocate will follow with "More of Judd." In the alternative, this column may next review the soon to be released blockbuster by Ralph Nader, "The Threat of Parsley."

* "Ginzburg V. United States, 383 U.S. 463, 86 S. Ct. 942, 16 L. Ed. 2d 31 (1966).

Recent Decisions

Policing Police Brutality & Harassment

by Stuart Schuman

Despite the Warren Court's landmark holdings in cases like Mapp, Miranda, Wade and Katz which protect an accused from police excesses by formulating exclusionary rules to prohibit the use of unconstitutionally seized evidence at trial, expriences like Chicago, 1968, clearly indicate that in many instances police do not abide by the rule of law. Constitutional violations by the police remain commonplace.

Two of the more garden variety types of police transgressions are (1) the use of unreasonable force in making arrests, commonly called police brutality and (2) acts of police harassment and bullying in the form of unwarranted arrest, illegal searches and unwarranted disruption of harmless conduct.

While these practices rarely lead to prosecutions, the victims, usually Blacks, hippies and homosexuals, suffer serious intrusions upon essential elements of civilized life--the sanctity of individual personality, dignity and privacy. Exclusionary rules offer little solace for a bloodied head.

A student notewriter in 78 Yale Law Journal, page 143 (1968) eloquently sums up the problem,

"Where, as is often the case, police misconduct focuses largely on classes of people who are politically powerless to protect themselves, the Constitution's promise of equal protection is marred, and a community is divided into those whom the police protect and those whom the police victimize."

Recent activity in the Federal Courts is suggestive of legal theories which the civil liberties lawyer can use to counter incidents of police brutality and harassment.

In the recently decided case of Sauls v Hutto, the United States District Court for the Eastern District of Louisiana faced up to the question of police brutality and awarded money damages under the state wrongful death statute to the mother of a boy who had been shot in the back by the defendant policeman as he attempted to flee from the scene of an accident involving a stolen car.

The court held that state law demanded that only reasonable force could be used to effect arrests and overcome resistance, and that it is clearly unlawful to use deadly force to prevent any crime other than violent felonies involving danger to life or great bodily harm to innocent bystanders or the officer.

Beside sanctioning the private tort theory, the Sauls case presents an enlightened opinion in a public law sense. Language in the decision strongly implies that acts of police brutality are akin to state inflicted punishment without due process guarantees.

Hence they are violations of civil rights for which a victim can obtain redress in a civil action under the 1871 Civil Rights Statue, 42 U.S.C. 1983. The 1983 statute might also enable one to obtain injunctive relief against police harassment.

The Sauls Court reasoned that the proper penalty for automobile larceny and resistance to arrest is not summary execution, but usually a short prison sentence after procedural due process. That a 1983 action is a viable legal theory to obtain relief from police brutality has been clearly established since 1961.

In the great case of Monroe v Pape, the Supreme Court held that the general civil remedy section of the Civil Rights Act of 1871 authorized damage actions against police officers for unconsitutional conduct. Indeed, the Federal Court in the Sauls case only assumed jurisdiction and granted relief on the state tort claim pendant to a 1983 claim.

Police harassment ranges all the way from verbal insults to unlawful arrests made without intent of prosecution. As the police devote much time, energy and money to stamp their morality on others, murders and rapes continue to be committed and go unsolved.

It should be noted that beside an action based on 42 U.S.C. 1983, there may be other legal theories to halt these so-called "morality" arrests. One is the traditional constitutional law approach, that is, attacking statutes under which such arrests are made by charging them with vagueness, a constitutional infirmity.

Such an attack was successfully made on the D.C. general vagrancy and narcotic vagrancy statutes last December in the case of Ricks v. U.S. The District Court held that statutory criteria like "loitering," "giving a good account of himself" and "leading an immoral and profligate life" describe standards of conduct which range from ostensibly innocent to the the potentially criminal. Therefore the defendant in Ricks was deprived of his 5th Amendment rights under the due process clause because he was not adequately warned that conduct so loosely described might be criminal.

Many Supreme Court decisions have clearly indicated that much vague legislation in the form of disorderly conduct statutes, breach of the peace statutes and vagrancy statutes has had as its principal aim the protection of the conventional majority from association with minorities considered unpleasant or undesirable.

The potential for governmental abuse from uncertainty of application of such statutes is clear. The civil liberties lawyer is well advised to argue creatively the vice of vagueness as a defense to a prosecution or perhaps in a declaratory judgment action.

As the Yale Law note cited above indicates, the use of 42 U.S.C. 1983 might also serve as a viable legal theory to gain redress from police harassment. The statute reads:

"Every person who under color of any statute,... custom...of any state subjects...any citizen of the U.S....to the deprivation of any rights, privileges or immunities secured by the Constitution...shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

If a plaintiff can show a pattern of bad faith police action and a likelihood of future continuance, 42 U.S.C. 1983 might allow prohibitory injunctions against offending individual policemen or even against those responsible for law enforcement policy.

Not many cases granting injunctive relief as a remedy for unconstitutional police conduct can be found. However a case now pending in the Third Circuit might provide an interesting precedent. In Tobin v Frank Rizzo, Police Commissioner, members of the Philadelphia police force, acting pursuant to the state obscenity statute, engaged in a series of three raids on plaintiff's psychedelic shop within three months.

On these occasions, the police made arrests and seized hundreds of buttons and posters, much of which was relevant political and social comment. The only standard used to determine obscenity was the personal opinion of the arresting officers - this even after charges stemming from the first arrest were dismissed at the preliminary hearing.

Plaintiffs then brought a 1983 action, alleging that police conduct had the effect of violating their first amendment rights and "chilling" the continued excercise of these rights. The relief sought was an injunction ordering the police to restrain all members of his force from future raids without a prior judicial determination of whether the materials were in fact obscene.

If the court declares the existence of the wrong and directs Rizzo to correct it, this theory might be compelling in other situations where police harassment is obvious.

In summation, cases like Sauls, Ricks and hopefully Tobin are perhaps indicative of a trend in the federal courts making the rhetoric of "law and order" applicable to the police too.

SBA Featured Activity

International Law Society

by Jim Weigert

The National Law Center has one of the country's most extensive international law programs. Among the degrees offered on a graduate level is the Masters of Comparative Law. For the student working on his Juris Doctorate, an opportunity to participate in this field is furnished by the Student International Law Society.

The field of international and comparative law is divided into two main areas, commonly known as public and private international law. Several examples will serve to clarify the difference. The business dealings of corporations which have offices in foreign countries require the co-ordination of American law with that of other nations. The activities of the U.N. and the State Department - relations among nation states - are considered in the domain of public international law. The Student International Law Society attempts to provide its members with exposure to both types of international law.

Career conferences, both with government lawyers and lawyers in private practice, present a picture of the workings of private international law. Among our speakers last year was Walter Slowinski, a member of a leading international law firm, Baker & McKenzie.

Another career conference last year featured several young lawyers in various government departments dealing with overseas matters. A conference along these lines will be held in November of the current year.

One of the best ways of exposing students to the views of other nations is through direct contact. This is provided by the Society's Embally Tour Program. The tours are frequently quite provocative. A visit to a still Dubcek-controled Czechoslovakian embassy produced an admission of Russian agression, coupled with a "what can we do?" attitude.

At the Nigerian embassy, the Nigerian ambassador himself took the opportunity to plead his country's seldom-heard side of the Biafran War. The Mid-East was focused upon by a visit to the Israeli Embassy and a lecture by Sir John Glub, former Commander of the Jordanian Arab Legion. The first tour of the current year will be of the Australian embassy on October 30.

The Society frequently sponsors lectures by highly-qualified speakers. Senator Claiborne Pell of the Senate Foreign Relations Committee addressed the Society at last spring's luncheon. The highlight of the current year will hopefully be a spring visit by Dr. Chen-O Yu. A noted international lawyer, Dr. Yu's opposition candidacy in the South Korean elections for the office of President would have been assured had a recent referendum in that country not extended President Park's term.

As to actual participation, the Society enters a team in the annual Phillip H. Jessup Moot Court Competition which brings together students of international law from all over America, parts of Europe, and Canada.

Finally, the organization affords an opportunity for the students to meet the international law faculty of the law school. A panel discussion on the eve of the October 15 Moratorium featured Professors Mallison and Miller.

The Society also has a fine social program, and the annual Fall Party, open to all students, was quite successful. Two more parties are planned *Editor's note: The next issue of the Advocate will feature a column on the Law Wives Association.*

ACLU Notes

Death Penalty Hit

In "Heinlein v. U.S," the ACLU Fund will file an amicus curiae brief in the United States Court of Appeals arguing that the death penalty is cruel and unusual punishment, in violation of the 8th Amendment of the Constitution.

Richard Cohen, a contributor to the last issue of the "Advocate," is represented by the Fund in his complaint against General Sessions Court Judge Sorrell who expelled him from the courtroom because of the length of his hair.

The ACLU has received other complaints of a similar nature about this judge. If necessary, a petition for mandamus will be filed in the D.C. Court of Appeals to restrain the Judge from unlawfully excluding persons from a public courtroom.

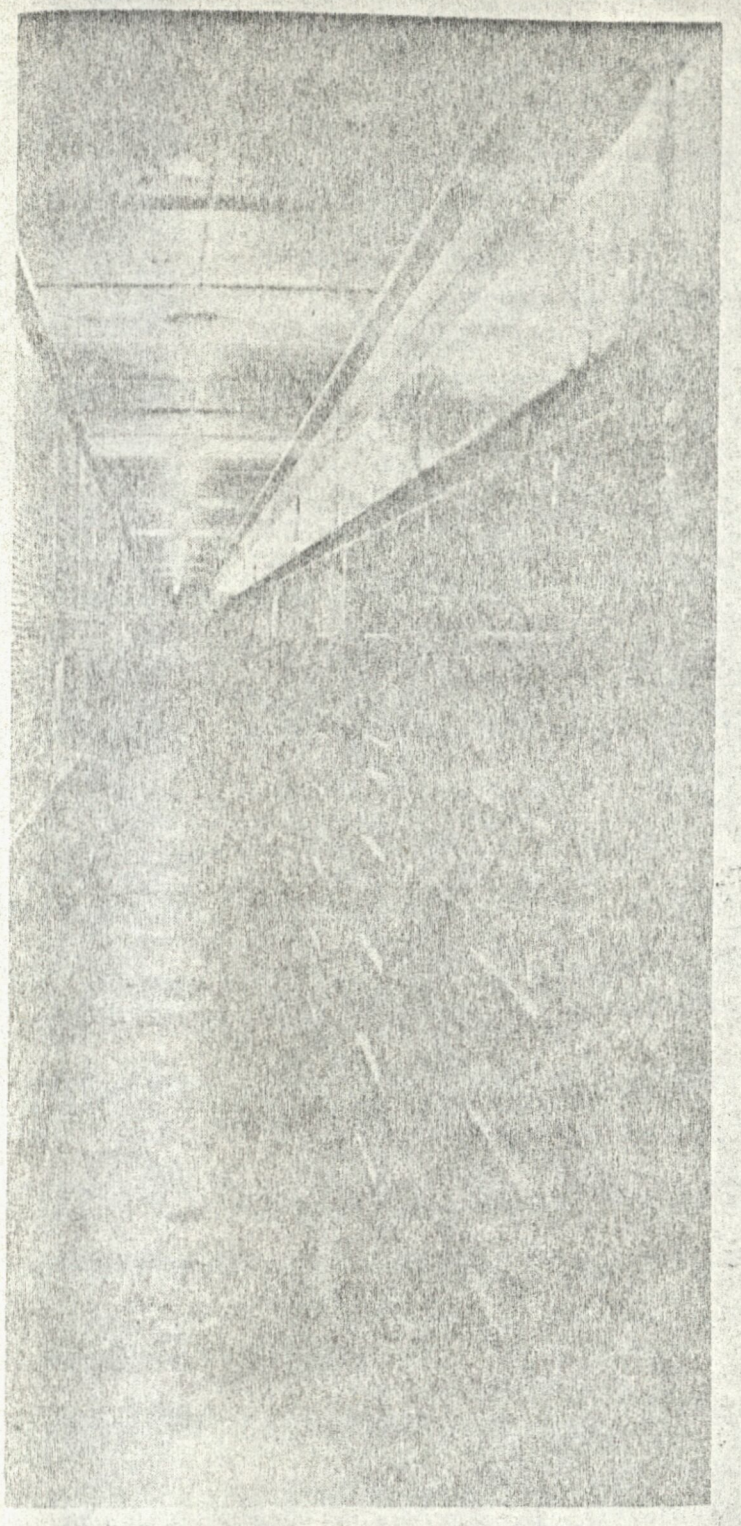
* * *

On "Anonymous v. Corrections Department," the Fund will represent a prisoner confined in "Maximum security" for an alleged disciplinary infraction, without charges and without a due process hearing.

Despite the continuation of his top secret clearance, a privately employed individual was removed from a top security project his company is conducting for the government. Although his employment has been continued as well as his clearance, the Government refuses to disclose the specific reasons for his removal, stating only that they are security matters. In "Anonymous v. Defense Department," the Fund will press the man's right to know the reasons.

In another security clearance case, Nancy Pyeatt, volunteer attorney for the ACLU, will represent a man whose industrial security clearance was revoked by the AEC for alleged homosexuality activity and then restored by the AEC security appeals board.

The board refused to make available a copy of its report supporting the restoration of clearance. The Fund will press the legal right to a copy of the report in "Anonymous v. Atomic Energy Commission."



Barnie Boston, the Washington Evening Star
A corridor on a lonely cellblock in D.C. Jail.

Rector — from p. 9

100,000 Youths Illegally Detained

No group has greater potential for forcing reform than the organized Bar. Every child as well as adult in detention, jail or commitment institution should be some lawyer's client.

Where courts and correctional administrators can provide no better custody than in jails and institutions where the health and personal safety of the client is endangered or where the client's right to correctional treatment is not and cannot be met, the lawyer is remiss in not requesting immediate release. The organized Bar has often joined with the critics of juvenile court and correctional systems.

Seldom has it used its might in seeing that deficient and dangerous systems are forced to meet up to date standards by challenge and litigation. The Bar has not yet turned its awakened concern for legal representation of the poor to the detention or post sentence rights and well being of its clients.

You may wonder why at a hearing concerned with detention and institution facilities for young offenders I focus on greater leadership roles for judges and lawyers. It is because the judges control the intake of the correctional systems. They control who goes into institutions and who is to be rehabilitated in the community.

Judges have a status in the community few correctional persons enjoy. If judges as the users of correctional services are informed and speak out about the deficiencies of these services-- to the point of declining to use them-- the legislative and executive branches of government will respond with appropriations for personnel and changes.

Lawyers are independent representatives of the client and community. They are free of the bureaucratic and political forces which often prevent correctional officials and judges from speaking out.

They should represent the individual offender, and initiate action for his release when detention and correctional institutions are unfit and unable to carry out the intent of the statutes and intent of court orders for correctional treatment.

Less than five percent of the personnel in correctional institutions is assigned to treatment or rehabilitation functions.

Even though it is against the law to detain juvenile offenders in jail, in most states over 100,000 are detained in jail every year--many of whom are dependent, not delinquent.

Judges use the jails because ninety-three percent of the nation's juvenile courts serving forty-four percent of the population have no separate juvenile detention facilities. Only five states have developed regional detention facilities.

In at least twenty-one states the courts leave the detention of juveniles to the unlimited discretion of correcting authorities and do not require court approved detaining orders.

Most prison reform in America has come about when leading citizens on riot investigating commissions were appalled at conditions underlying the riots. It was inmates rather than correctional leaders who brought the deficiencies to public attention.

Progressive changes instigated after such public investigations were often those the correctional administrators thought "the public wasn't ready for." What are probably the world's most advanced correctional institutions in the Netherlands became so because their leading citizens served time in those institutions during the war. They took pains after the war to reduce the size of new institutions, to increase the treatment staff and to reduce state exploitation of prison labor.

Borwick — from p. 5

Courts and the Prisoner

conditions as they presently exist. The result has been to give acceptance and status to prison barbarity of almost any kind.

There are three recent decisions however which one might hope will herald a new approach by the courts. Common to all three of the cases is a greater willingness to view the eighth in the light of modern psychological and sociological understanding along with enlightened penal concepts.

Jordan v Fitzharris (257 F. Sup. 674, 1966) concerns a man in solitary confinement in a strip cell without furniture, adequate light or ventilation, coupled with a denial of food and health articles. In ignoring the hands-off doctrine the court criticized prison officials for abandoning even elemental concepts of decency. But besides applying the eighth amendment, the court used an even more revolutionary and perhaps further reaching idea. Recognizing its own inability to lay out penal regulations the court deferred to the guidelines published by the American Correctional Association as those which should be applied as a minimal standard.

In Wright v McMann (257 F. Supp. 739, 1966, rev'd 387 F. 519, 2d Cir., 1967) the complaint was similar to the Jordan case with the added facts that while confined in solitary Wright alleged that he was forced to remain naked for eleven days with the windows in front of his confinement cell opened wide throughout the evening and night hours of each day during subfreezing temperatures causing him to be exposed to the cold air and winter weather. Wright further alleged that he was unable to keep himself clean or perform normal hygienic functions as he was denied the use of soap, towel, toilet paper, tooth brush, comb and other implements.

The trial court dismissed Wright's complaint on the grounds that inter alia it failed to show a denial of constitutional rights. The Second Circuit reversed rejecting the hands-off-doctrine and while using the eighth amendment as in the Fitzharris case, the court also used the expertise of an outside source--this time the United States Bureau of Prisons--which required solitary quarters in federal prisons to be well ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times.

Finally, the Ninth Circuit in the opinion of Jackson v Bishop (404 F. 2d 571, 9th Cir. 1968) in holding the whipping of prisoners as unconstitutional relied on the expert testimony of James V. Bennett, a former Director of the Missouri Division of Corrections who testified that corporal punishment has not been used in federal prisons for years. Citing him as authority the court held that the use of a strap in this day is both unusual and cruel.

Yet, even if the eighth amendment as it was used in these cases were to be applied to its fullest extent, it would at best be only a tool to remedy individual situations on a case by case basis. Further, one can envision situations which, while not falling within the protection of the eighth, still represent an unreasonable and arbitrary abridgment of administrative authority. (Certainly such a case as the unauthorized corporal punishment by lower prison officials such as guards might illustrate this point.)

The importance of the eighth then may not ultimately be in protecting an individual prisoner from the abuse of a single prison official but rather in its ability to logically act as a bridge to help extend the much broader power of the fourteenth amendment. When this comes about not only will cruel and unusual punishment be proscribed but all arbitrary penal action which violates due process.

Zweben — from p. 4

Law Review Schism

While large firms have difficulty recruiting from law reviews at schools like Harvard, our law review arranges closed meetings with Jean Ouigley of the Placement Office for second year associates to line up high-paying and 'prestigious' jobs at these same firms.

By not attaching conditions, they are taking advantage of a vacuum opened by the boycott of less automated students. When firms do listen to these conditions, it seems clear that it will be in spite of the attitudes of most members of our law review.

I had been unaware that review participation excludes activism and was certainly not conscious that it would invite charges of hypocrisy. It has been my hope that more of our members would spend summers doing public interest work as I have found associates and editors of other reviews doing in order to develop more rounded publications.

In some schools law reviews have become activist and reform-minded. Mr. Michael E. Tigar, former editor-in-chief of Berkeley's law review (1966), has amply demonstrated the possibilities for such publications by personally defending the leaders of the Free Speech Movement at Berkeley, and by organizing an entire review issue around the issues of student rights.

In a more immediate context, editors from other law reviews have openly supported the picketing of Wilmer, Cutler, and Pickering, while certain of our editors were being interviewed by these same gentlemen under what conditions of comfort one can only pleasantly imagine.

Finally, Jack's letter basically has reworded a passe command; "law reviews and big firms - love them or leave them." This would be acceptable advice if these institutions did not automatically represent, defend, and protect as "legal adversaries" powers whose wealth is derived at expense to the rest of us in the form of air pollution, toxic foods, and poverty.

When these strawmen are properly singed, maybe he can assist me in inventing others.

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